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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

VOLUME III

232 Cal.App.3d 1060

1060 CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Plaintiffs and Appellants,

v.

Gerald ARMSTRONG, Defendant and Respondent.

Nos. B025920, B038975.

Court of Appeal, Second District, Division 3.

July 29, 1991.

Review Denied Oct. 17, 1991.

Church sued former church worker alleging he converted confidential archive materials and disseminated materials to unauthorized persons, in breach of his fiduciary duty. Former church worker cross-complained seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract and tortious interference with contract. The Superior Court, Los Angeles County, Paul G. Breckenridge, Jr., and Bruce R. Geernaert, JJ., dismissed complaint, later settled and dismissed cross action, and ordered documents returned to the church and the records sealed. Church appealed. The Court of Appeal, Danielson, J., held that: (1) successor judge's order unsealing record more than five years after order was sealed by his predecessor exceeded judge's authority, and (2) under application of conditional privilege doctrine, sufficient evidence supported finding that church worker's conversion of church documents was justified by his reasonable belief that church intended to cause him harm and that he could prevent the harm only by taking the documents.

Affirmed.

1. Appeal and Error ⇐105

An order dismissing conversion action with prejudice, rather than an interlocutory order captioned "judgment" which ordered that conversion plaintiffs take nothing by their complaint but did not resolve cross complaint, was the appealable judgment in the action.

2. Appeal and Error ⇐837(9)

Claim that opponent's testimony was impeached by testimony given in other proceeding subsequent to judgment appealed from was not cognizable on appeal.

3. Judges ⇐32

Successor judge's order on his own motion vacating predecessor judge's order sealing court records in document conversion dispute between church and former church member exceeded successor judge's authority where vacating order was entered long after time for reconsideration of sealing order had expired, and no showing was made other than that supporting motion for access to record by nonparty who was also involved with litigation with church. West's Ann.Cal.C.C.P. §§ 473, 1008.

4. Records ⇐32

Persons seeking sealing of record on appeal had to make more particularized showing of need than a mere request that their pursuit of an action for conversion of confidential church documents, brought primarily to protect privacy interests in the documents converted, should not cause disclosure of the information they sought to protect, without any limitation to any particular portions of voluminous record of trial court proceedings.

5. Torts ⇐27

Trover and Conversion ⇐40(1)

Sufficient evidence supported finding that church worker's alleged conversion of confidential church archive materials when worker delivered documents to his attorney was motivated by worker's reasonable belief that he and his wife were in danger because the church was aware of what he knew about the life of its founder, the secret machinations and financial activities of the church, and worker's dedication to the truth, and thus did not subject worker to liability for conversion and invasion of privacy under the conditional privilege doctrine.

6. Religious Societies ⇐31(5)

Trial ⇐54(1)

Trial court did not abuse its discretion in admitting documentary and testimonial

evidence concerning history of church worker's relationship with church and church practices in relation to its members, former members or critics, where record indicated court recognized that the statements were admitted for the limited purpose of proving reasonableness of worker's belief that church intended to harm him when he converted church's documents.

7. Trial ⇐387(1)

Trial court's statement of decision in church document conversion case merely reflected court's findings on elements of justification defense asserted by church worker and did not result in miscarriage of justice.

[1063]Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Bowles & Moxon, Eric M. Lieberman, Timothy Bowles, Kendrick L. Moxon and Michael Lee Hertzberg, for plaintiffs and appellants.

Gerald Armstrong, In Pro. Per.

Toby L. Plevin, Paul Morantz and Michael L. Walton, for defendant and respondent.

Lawrence Wollersheim, amicus curiae, on behalf of respondent.

DANIELSON, Associate Justice.

In consolidated appeals, the Church of Scientology (the Church) and Mary Sue Hubbard (hereafter collectively "plaintiffs") appeal from an order after appealable judgment unsealing the file in Church of Scientology of California v. Gerald Armstrong (B038975), and from the judgment entered in the case (B025920). We vacate the order and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In the underlying action, the Church sued Armstrong, a former Church worker, alleging he converted to his own use confidential archive materials and disseminated the same to unauthorized persons, thereby breaching his fiduciary duty to the Church, which sought return of the documents, injunctive relief against further dissemination of the information contained therein, imposition of a constructive trust over the property and any profits Armstrong might realize from his use of the materials, as well as damages. Mary Sue Hubbard (Hubbard), wife of Church founder L. Ron Hubbard, intervened in the action, alleging causes of action for conversion, invasion of privacy, possession of personal property [*sic*], and declaratory and injunctive relief. Armstrong cross-complained, seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

With respect to the complaint and complaint-in-intervention, the trial court found the Church had made out a prima facie case of conversion, breach of fiduciary duty, and breach of confidence, and that Mary Sue Hubbard had made out a prima facie case of conversion and invasion of privacy. However, the court also determined that Armstrong's conduct was [1064]justified, in that he believed the Church threatened harm to himself and his wife, and that he could prevent such harm by taking and keeping the documents.

Following those determinations the court made and entered an order, entitled "Judgment," on August 10, 1984,[1] ordering and adjudging that plaintiffs take nothing by their complaint and complaint-in-intervention, and that defendant Armstrong have and recover his costs and disbursements. Plaintiffs filed notice of appeal from that order.

[1] We dismissed the appeal (B005912) because that "judgment" was not a final judgment and was not appealable; Armstrong's cross-complaint had not yet been resolved and further judicial action was essential to the final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 670, 123 P.2d 11.)

Armstrong's cross-action was then settled and dismissed, the subject documents

1. The "judgment" of August 10, 1984, is not included in the present record on appeal. However, it is included in the petition of plaintiffs and appellants for review by our Supreme Court of our decision (B005912) in this case, filed December 18, 1986.

were ordered returned to the Church, and the record was sealed by Judge Breckenridge pursuant to stipulation of the parties. The dismissal of Armstrong's cross-action was a final determination of the rights of the parties, and constituted a final judgment, permitting appellate review of the court's interlocutory order captioned "judgment" filed August 10, 1984.

Plaintiffs then timely filed a new notice of appeal (B025920), from the orders entitled "Order for Return of Exhibits and Sealed Documents" and "Order Dismissing Action With Prejudice," both filed December 11, 1986, and from the "Judgment" filed August 10, 1984, stating that the appeal was "only from so much of those orders and judgment which denied damages to plaintiff and plaintiff-intervenor" on their complaints. We rule that the Order Dismissing Action With Prejudice is the appealable judgment in B025920.[2]

The Unsealing Order After Judgment (B038975)

On October 11, 1988, Bent Corydon, who is a party to other litigation against the Church, moved to unseal the record in this case for the purpose of preparing for trial of his cases. He sought only private disclosure. Judge 1065 Breckenridge having retired, Corydon's motion was heard by Judge Geernaert, who made an order dated November 9, 1988, which he clarified by another order dated November 30, 1988, which opened the record not only to Corydon but also to the general public, thus vacating the earlier order made by Judge Breckenridge.

On December 19, 1988, plaintiffs Church and Hubbard filed a timely notice of appeal from those orders made after appealable judgment. That appeal, B038975, is the other of the current consolidated appeals.

On December 22, 1988, Division Four of this court issued an order staying Judge Geernaert's orders (1) unsealing the record and (2) denying a motion for reconsideration of the unsealing order, to the extent those orders unsealed the record as to the general public and permitted review by any person other than Corydon and his counsel of record. On December 29, 1988, Division Four modified this stay order by adding to it a protective order prohibiting Corydon and his counsel from disseminating copies of or disclosing the content of any documents found in the file to the public or any third party, except to the extent necessary to litigate the actions to which Corydon and the Church were parties. Corydon and his counsel were also required to make good faith efforts in Corydon's litigation to submit under seal any documents they found in the file of this case.

On this appeal, Corydon argues in favor of the trial court's order unsealing the record, as he wishes to be free of the protective orders contained in the modified stay order issued by Division Four.

The "Judgment" of August 10, 1984 (B025920)

[2] Armstrong's taking of the documents is undisputed. The evidence relating to his claim of justification, which was found credible by the trial court,[3] established that Armstrong was a dedicated member of the Church for a period of twelve years. For ten of those years, he was a member of the Sea Organization, an elite group of Scientologists working directly under Church founder L. Ron Hubbard. In 1979, Armstrong became a part of L. Ron Hubbard's "Household Unit" at Gilman Hot Springs, California.

In January 1980, fearing a raid by law enforcement agencies, Hubbard's representatives ordered the shredding of all doc-

2. We later granted the motion of appellant Church to deem the record on appeal in B005912 to be the record on appeal in B025920, which is one of the current consolidated appeals; we also take judicial notice of the entire record in B005912. Consequently the reporters' transcript, the appendices of the parties on appeal, and the parties' briefs in case No. B005912 are part of the record on appeal in B025920. The parties have also filed briefs in B025928.

3. Plaintiffs' contention that certain testimony was impeached by testimony given in other proceedings subsequent to the judgment herein is, of course, not cognizable on this appeal.

uments showing that Hubbard controlled Scientology organizations, finances, personnel, or the [1066]property at Gilman Hot Springs. In a two-week period, approximately one million pages were shredded pursuant to this order.

In the course of the inspection of documents for potential shredding, Armstrong reviewed a box containing Hubbard's early personal letters, diaries, and other writings, which Armstrong preserved.

Thereafter, Armstrong petitioned for permission to conduct research for a planned biography of Hubbard, using his discovery of the boxed materials. Hubbard approved the petition, and Armstrong, who had discovered and preserved approximately 16 more boxes of similar materials, became the Senior Personal Relations Officer Researcher. He subsequently moved the materials to the Church of Scientology Cedars Complex in Los Angeles.

Hubbard selected one Omar Garrison to write his biography. Armstrong became Garrison's research assistant, copying documents and delivering the copies to him, traveling with him, arranging interviews for him, and generally consulting with him about the project. Armstrong also conducted a genealogical study of Hubbard's family, and organized the materials he had gathered into bound volumes for Garrison's use, retaining a copy for the Church archives. The number of documents obtained by Armstrong ultimately reached 500,000 to 600,000. Within a week after commencing the biography project, Armstrong and Garrison began to note discrepancies between the information set forth in the documents and representations previously made concerning Hubbard. Then Armstrong was summoned to Gilman Hot Springs, where he was ordered to undergo a "security check" consisting of interrogation while connected to a crude lie-detector called an E-meter, to determine what materials he had delivered to Garrison and to meet charges that he was speaking out against Hubbard.

In November 1981, Armstrong wrote a report urging the importance of ensuring the accuracy of all materials published concerning L. Ron Hubbard, and relating examples of factual inaccuracies in previous publications. In December 1981, Armstrong and his wife left the Church, surreptitiously moving their possessions from the Church premises because they knew that persons attempting to leave were locked up, subjected to security checks, and forced to sign promissory notes to the Church, confessions of "blackmailable" material obtained from their personal files, and incriminating documents, and they were afraid that they would be forced to do the same. Before leaving, Armstrong and his wife copied a number of documents which he delivered to Garrison for his work on the Hubbard biography. After leaving, Armstrong cooperated with his successor, assisting him in locating documents and other items.

[1067]Commencing in February 1982, the international Church of Scientology issued a series of "suppressive person declares" in effect labelling Armstrong an enemy of the Church and charging that he had taken an unauthorized leave, was spreading destructive rumors about senior Church officials, and secretly planned to leave the Church. These "declares" subjected Armstrong to the "Fair Game Doctrine" of the Church, which permits a suppressive person to be "tricked, sued or lied to or destroyed ... [or] deprived of property or injured by any means by any Scientologist...."

At around the same time, the Church confiscated photographs of Hubbard and others that Armstrong had arranged to sell to one Virgil Wilhite. When Armstrong met with Church members and demanded the return of the photographs, he was ordered from the Church property and told to get an attorney. Thereafter, he received a letter from Church counsel threatening him with a lawsuit. In early May 1982, he became aware of private investigators watching his house and following him.

These events caused Armstrong to fear that his life and that of his wife were in danger, and that he would be made the target of costly and harassing lawsuits. The author, Garrison, feared that his home would be burglarized by Church personnel

seeking to retrieve the documents in his possession.

For these reasons, Armstrong took a number of documents from Garrison and sent them to his attorney.

Following commencement of the instant action, Armstrong was pushed or shoved by one of the Church's investigators. In a later incident his elbow was struck by an investigator's vehicle; still later, the same investigator pulled in front of Armstrong on a freeway and slammed on his brakes. This investigator's vehicle also crossed a lane line as if to push Armstrong off of the road. Plaintiffs' position is that the investigators were hired solely for the purpose of regaining the documents taken by Armstrong.

Trial of the complaint and the complaint-in-intervention was by the court sitting without a jury. On August 10, 1984, the court made its order, captioned "Judgment," ordering that plaintiff Church and plaintiff in intervention Hubbard, take nothing by their complaint and complaint-in-intervention and that defendant Armstrong have and recover from each of them his costs and disbursements.

[1068] DISCUSSION

The Order Unsealing The Record Must Be Reversed

[3] "Although the California Public Records Act (Gov.Code, §§ 6250 [et seq.]) does not apply to court records (see § 6252, subd. (a)), there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records nonpublic. (See *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220–222 [71 Cal.Rptr. 193]....) To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public.... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as *Craemer, supra*, and *Rosato v. Superior Court* (1975) 51 Cal.App.3d 190 [124 Cal.Rptr. 427] ..., which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed.' (*Craemer, supra*, 265 Cal.App.2d at p. 222 [71 Cal.Rptr. 193]) The court in *Craemer* suggested that countervailing public policy might come into play as a result of events that tend to undermine individual security, personal liberty, or private property, or that injure the public or the public good." (*Estate of Hearst*, (1977), 67 Cal.App.3d 777, 782–783, 136 Cal. Rptr. 821.)

"If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism. For this reason traditional Anglo–American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals. Thus in *Sheppard v. Maxwell* (1966) 384 U.S. 333, 350 [86 S.Ct. 1507, 1515, 16 L.Ed.2d 600, 613], the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (*In re Shortridge* (1893) 99 Cal. 526, 530 [34 P. 227]....) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...." (*Estate of Hearst, supra*, 67 Cal.App.3d at p. 784, 136 Cal.Rptr. 821.)

We are unaware of any showing made before Judge Breckenridge, other than the parties' stipulation, justifying sealing by the trial court of the record in this case. However, inasmuch as the parties agreed to the sealing in December of 1986, and no third party intervened at that time to seek [1069] reconsideration or review of the court's order, the order became final long before Corydon intervened in the action almost two years later.

In *Greene v. State Farm Fire & Casualty Co.* (1990) 224 Cal.App.3d 1583, 274 Cal. Rptr. 736, the court stated at page 1588, 274 Cal.Rptr. 736: "The power of one judge to vacate an order duly made by another judge is limited. In *Fallon v. Superior Court* (1939) 33 Cal.App.2d 48, 52 [90 P.2d 858] ... we issued a writ of prohibition restraining a successor law and motion judge from vacating an order of his predecessor, stating, 'Except in the manner prescribed by statute a superior court may not set aside an order regularly made.' In *Sheldon v. Superior Court* (1941) 42 Cal.App.2d 406, 408 [108 P.2d 945] ... the Court of Appeal, Second Appellate District annulled the order of one probate judge which vacated the previously made order of another probate judge appointing an administrator, stating 'that a valid order made *ex parte* may be vacated only after a showing of cause for the making of the latter order, that is, that in the making of the original order there was (1) inadvertence, (2) mistake, or (3) fraud.' Even more on point, in *Wyoming Pacific Oil Co. v. Preston* (1958) 50 Cal.2d 736, 739 [329 P.2d 489] ... the California Supreme Court reversed the order of a second judge dismissing an action under former [Code of Civil Procedure] section 581a for failure to make service of process within three years, after a first judge had found as a fact that the affected defendant was concealing himself to avoid service of process, quoting *Sheldon*. [Citation.]" (Fn. omitted.)

In *Greene, supra*, Alameda County Superior Court Judge Donald McCullum issued general order 3.30, in which he found it impracticable, futile, or impossible to bring certain cases, including *Greene*, to trial within the applicable five-year limitation period (Code Civ.Proc., § 583, subd. (b)), and extended the deadline for bringing those cases to trial. Thereafter, Judge Richard Bartalini, to whom the case was assigned for trial, dismissed the action, on motion of the defendants, for failure to bring it to trial within five years. The court stated, "[D]efendants were, in effect, asking Judge Bartalini to focus on the particular facts of the case and, in light of those facts, to rethink Judge McCullum's order and to see whether he agreed with it. No statutory authority exists for such a request, and Judge Bartalini erred in granting it. [Citations.] General order 3.30 could 'not be set aside simply because "the court concludes differently than it has upon its first decision."' [Citations.]" (*Greene v. State Farm Fire & Casualty Co., supra*, 224 Cal.App.3d at p. 1589, 274 Cal. Rptr. 736.)

In our case, Corydon intervened in the action between plaintiffs and Armstrong, seeking access to the sealed record for the limited purpose of preparing his own cases involving the Church. Judge Geernaert, on his own motion, vacated Judge Breckenridge's order sealing the record. The time [1070] had long since expired for reconsideration of Judge Breckenridge's order (Code Civ.Proc., § 1008), or relief therefrom pursuant to Code of Civil Procedure section 473, and the parties had the right to rely on the sealing order. No showing was made other than that supporting Corydon's motion for access to the record.[4] We hold Judge Geernaert exceeded his authority in vacating Judge Breckenridge's order sealing the record.[5]

4. Plaintiffs do not challenge Corydon's access to the record, stating in their brief: "Corydon's access must continue to be limited by the conditions imposed thus far by this court's Modified Temporary Stay Order.... He sought access only for use in private litigation against the Church; this court's order, which permits him to use the information he obtains only in said litigations and only after making a good faith effort to have it introduced under seal, is appropriately tailored to meet his asserted need without unnecessarily invading appellants' privacy." Pursuant to the stay order issued by Division Four, Corydon has had the desired access since December 22, 1988, and the issue is moot as to him. He now seeks in this court more than he sought by his motion in the trial court.

5. Armstrong, who did not participate in the hearing on the motion below, has filed a brief claiming the record should be unsealed because the Church has failed to comply with the terms of its settlement agreement with him. His declarations to the latter effect are not properly before us on this appeal, as they were not considered by the trial court. We therefore consider neither the meaning of the portions of the settlement agreement to which he refers nor the question whether the Church has complied therewith.

The Record On Appeal Is Not Sealed

There remains a question as to the effect of this appeal upon the sealing order. The brief filed by the plaintiffs apparently assumes continued effectiveness of the order on appeal.

In *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, the court referred to "an increasing trend by litigants to assume that when the parties stipulate below or convince the trial court of the need for confidentiality, no showing of need must be made in this court." (*Id.* at p. 785, 247 Cal.Rptr. 624.) The *Champion* court determined to the contrary, stating "that a party seeking to lodge or file a document under seal bears a heavy burden of showing the appellate court that the interest of the party in confidentiality outweighs the public policy in favor of open court records. 'The law favors maximum public access to judicial proceedings and court records. [Citations.] Judicial records are historically and presumptively open to the public and there is an important right of access which should not be closed except for compelling countervailing reasons.' [Citation.]" (*Id.* at p. 788, 247 Cal. Rptr. 624.)

Plaintiffs cite *Champion*, claiming, inter alia, that the appellate court, in granting the motion to seal in that case, stated it was "influenced by the [1071] parties' agreement to the procedure and by the lower court's sealing of its records." The quoted language appears at page 786, 247 Cal. Rptr. 624 of the decision, and refers to the court's initial response to requests to seal received in connection with the petition, opposition, and amici curiae requests. Later, after receiving "rebuttal briefs, rebuttal declarations, reply to amici, declarations in reply to amici, and supplemental declarations," (*Champion v. Superior Court, supra*, 201 Cal.App.3d at p. 786, 247 Cal.Rptr. 624) resulting in a file containing "some sealed documents, some public documents, and many documents not yet designated as sealed or public," (*ibid.*) most of which blended together discussions of confidential and public materials, as well as requests to seal all of the documents without any explanation of why any of the documents deserved such treatment (*ibid.*), the court stated, at page 787, 247 Cal.Rptr. 624, "it is apparent that we acted precipitously in granting the earliest, unsupported, requests to seal documents lodged or filed in this matter." While the court did ultimately grant the application to seal the entire file, it did so because of the confusion and undue complication and delay that would be caused by return of the documents for segregation into public and confidential portions. (*Id.* at pp. 789–790, 247 Cal.Rptr. 624.)

[4] In our case, plaintiffs have not formally requested sealing of the record on appeal. They argue, in seeking reversal of Judge Geernaert's order vacating the sealing order made in the trial court, that their pursuit of an action brought primarily for the purpose of protecting their respective privacy interests in the documents converted by Armstrong should not cause disclosure of the very information they sought to protect, through references in the record to such information. The argument is not limited to any particular portion or portions of the voluminous record of the trial court proceedings. Should plaintiffs move to seal the record on appeal, we would require a much more particularized showing.

The Defense of Justification Applies To The Causes Of Action Alleged Against Armstrong; The Judgment Is Affirmed

"One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other." (Rest.2d Torts, § 652A(1).) "The right of privacy is invaded by [¶] (a) unreasonable intrusion upon the seclusion of another, ... or ... (c) unreasonable publicity given to the other's private life...." (Rest.2d Torts, § 652A(2).) "The rules on conditional privileges to publish defamatory matter

We are also in receipt of an amicus curiae brief of Lawrence Wollersheim, who urges unsealing of the record based on reasons of public policy. Wollersheim's argument is directed primarily to the documentary exhibits lodged in the underlying case. Those documents have been returned to the Church in accordance with the terms of the settlement agreement.

stated in §§ 594 to 598A, and on the special privileges stated in §§ 611 and 612, apply to the publication of any matter that is an invasion of privacy." (Rest.2d Torts, § 652G.) Under section 594 of the Restatement "[a]n occasion makes a publication conditionally privileged if the circumstances induce a correct or reasonable belief that (a) there is information that affects a sufficiently [1072] important interest of the publisher, and (b) the recipient's knowledge of the defamatory matter will be of service in the lawful protection of the interest."

"Unless otherwise agreed, an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal or acquired by him during the course of or on account of his agency or in violation of his duties as agent, in competition with or to the injury of the principal, on his own account or on behalf of another, although such information does not relate to the transaction in which he is then employed, unless the information is a matter of general knowledge." (Res.2d Agency, § 395.) However, "[a]n agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interests or in disobedience to his orders." (Res.2d Agency, § 418.)

With respect to plaintiffs' causes of action for conversion, "[o]ne is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict a harmful or offensive contact upon the other for the same purpose." (Res.2d Torts, § 261.) "For the purpose of defending his own person, an actor is privileged to make intentional invasions of another's interests or personality when the actor reasonably believes that such other person intends to cause a confinement or a harmful or offensive contact to the actor, or that such invasion of his interests is reasonably probable, and the actor reasonably believes that the apprehended harm can be safely prevented only by the infliction of such harm upon the other. (See § 63.) A similar privilege is afforded an actor for the protection of certain third persons. (See § 76.)" (Res.2d Torts, § 261, com.)

We find no California case, and the parties cite none, holding that the above described privileges apply in this state.[5] We

6. No purpose would be served by our engaging in an exhaustive discussion of each of the points asserted by plaintiffs.

For example, plaintiffs misconstrue the decision in *Dietemann v. Time, Inc.* (9th Cir.1971) 449 F.2d 245. The *Dietemann* court stated: "Privilege concepts developed in defamation cases and to some extent in privacy actions in which publication is an essential component are not relevant in determining liability for intrusive conduct antedating publication." (*Id.* at pp. 249–250.) The question in that case was whether the defendant, whose employees gained entrance to plaintiff's home by subterfuge and there photographed him and recorded his conversation without his consent, was insulated from liability by the First Amendment because its employees did these acts for the purpose of gathering material for a magazine story which was thereafter published. The case has nothing to do with the justification asserted herein. *Pearson v. Dodd* (D.C.Cir.1969) 410 F.2d 701, is similarly inapposite.

Discussing the privilege of an agent set forth in section 418 of the Restatement, plaintiffs point to the last sentence of comment b, which reads: "So, too, if the agent acquires things in violation of his duty of loyalty, he is subject to liability for a failure to use them for the benefit of the principal." This language has reference to the initial sentence of the comment: "If the conflict of interests is created through a breach of duty by the agent, the agent is subject to liability if he does not prefer his principal's interests." In the present case, the conflict was created by the plaintiffs, who threatened Armstrong with harm.

Referring to comment b to section 396 of the Restatement Second of Agency, which has to do with the use of customer lists in unfair competition, plaintiffs urge that even if Armstrong was privileged to verbally report to others information he gained in his capacity as an agent of the Church, he would not be privileged under any circumstances to retain or disseminate Church documents. They also urge, based on cases which are inapposite to that at bench, that the justification defense applies only in emergency situations requiring immediate action to avert danger, or where the agent believes that the principal's documents are the fruits or instrumentalities of crime or fraud. The court found, on substantial evidence, that Armstrong was under a reasonable apprehension of danger when

believe the trial |1073court appropriately adopted the Restatement approach respecting conditional privilege. (See 5 Witkin, Summary of Cal.Law (9th ed. 1988) Torts, § 278, p. 360; *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 421, 281 Cal. Rptr. 343.)

[5] In its statement of decision the court found Armstrong delivered the documents in question to his attorney "... because he believed that his life, physical and mental well-being, as well as that of his wife, were threatened because the organization was aware of what he knew about the life of L. Ron Hubbard, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about L. Ron Hubbard and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that L. Ron Hubbard, the Church, or any of their agents would do him physical harm." The court's findings were substantially supported by the evidence adduced at trial.

Admission of Documentary and Testimonial Evidence Over Appellants' Objections Did Not Result In A Miscarriage of Justice

Armstrong's defense was predicated on his claim that he reasonably believed the Church intended to cause him harm, and that he could prevent the apprehended harm only by taking the documents, even though the taking resulted in harm to the Church.

[6] |1074Plaintiffs complain of the trial court's admission of documentary and testimonial evidence concerning the history of Armstrong's relationship with the Church, and certain practices of the Church in relation to its members, as well as its former members and/or critics. The record is replete with statements of the court's recognition of the limited purpose for which the complained of statements were properly admitted, i.e., to prove Armstrong's state of mind when he converted the Church's documents. These statements are referenced in Armstrong's briefs, and acknowledged by plaintiffs.

Plaintiffs complain that certain testimony of defense witnesses was irrelevant, as there was no showing that Armstrong was aware of the facts to which the witnesses testified. The testimony in question was largely corroborative of Armstrong's testimony with respect to Church practices affecting his state of mind, and was relevant to the issue of the reasonableness of his belief that the Church intended to cause him harm.

[7] Plaintiffs complain, finally, that the trial court's statement of decision shows the court improperly considered the evidence admitted for the limited purpose of establishing Armstrong's state of mind. We are satisfied the complained of comments reflect the court's findings on the elements of the justification defense asserted by Armstrong, and that neither the admission of the evidence nor the court's comments resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.)

DECISION

The judgment is affirmed. The order vacating the order sealing the record in the trial court is reversed. Each party to bear its own costs on this appeal.

KLEIN, P.J., and HINZ, J., concur.

he delivered the documents to his attorney. More was not required.

Case Nos. B025920 & B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD

Intervenor-Plaintiff-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Appeal from the Superior Court of the State of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff-Appellant, and MARY SUE HUBBARD, v. GERALD ARMSTRONG, Defendant-Respondent.	Case Nos. B025920 & B038975 LASC No. C420153 NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Plaintiff Church of Scientology of California ("CSC") and Intervenor Mary Sue Hubbard ("Mrs. Hubbard") hereby move the Court for an order sealing portions of the record on appeal.

This motion to seal is made on the ground that the case was filed to vindicate property and privacy interests that had been invaded by defendant, and to leave these portions of appellate record unsealed will result in further violations of those interests. In addition, the trial court found that documents in issue in this case were stolen from plaintiff, and that CSC "had made out a prima facie case of conversion, breach of fiduciary duty, and breach of confidence, and that Mary Sue Hubbard had made out a prima facie case of conversion and invasion of privacy." When the case was settled in December 1986, the parties entered into a stipulation that the court

files would be sealed, and the July 29, 1991 decision of this Court upheld the validity of that stipulation against a challenge by an individual who was not a party to the underlying action, and ruled that the files below should remain sealed pursuant to agreement of the parties upon settlement. This action was the only method available to appellants to protect their rights, and the sealing of the files is therefore proper.

This motion is based on this notice of motion and motion, the attached Declaration of Kenneth Long, the attached Memorandum of Points and Authorities, the Brief of Appellants, Reply Brief of Appellants and Response to Cross Appeal, the record on appeal and the briefs on file herein.

DATED: September 11, 1991

Respectfully submitted,

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I.

PRELIMINARY STATEMENT

On July 29, 1991, this Court issued its decision in this case reversing an Order of the trial court unsealing the file in Church of Scientology of California v. Armstrong (B038975). The Court ruled that the trial court files were to remain sealed, but also ruled that "plaintiffs have not formally requested sealing of the record on appeal," and left it open for them to do so. (Decision at 18-19.) Appellants hereby accept that invitation and request that the Court order portions of the appellate record sealed as well.

The full record below has been sealed since December 1986 based upon stipulation of the parties at the time of settlement. Prior to that time, the underlying documents which are the subject matter of this suit were sealed during the pendency of the case because of their confidential nature. The trial court has ruled that defendant's actions with respect to the documents constitute conversion, breach of fiduciary duty, and breach of confidence with respect to plaintiff, and conversion and invasion of privacy with respect to Intervenor Mary Sue Hubbard. The appellate record is permeated with references to and discussions of the stolen documents throughout. Under these circumstances, it is appropriate for the Court to order portions of the record on appeal sealed.

II.

THE FACTS OF THIS CASE PROVIDE AMPLE CRITERIA UPON WHICH A SEALING ORDER CAN BE MADE

The documents in this case were kept in the court files

under seal from shortly after the inception of this lawsuit. At that time, Judge Cole of the Superior Court issued a temporary restraining order and then a preliminary injunction requiring defendant to deposit the documents which he had converted from plaintiff with the clerk of the court under seal. They remained under seal up to the time of trial, and many of them continued to be sealed after that time.

Appellants' claims in this case were tried before Judge Breckenridge without a jury in May 1984. At trial, appellants presented their case without introducing any of the private documents so as not to undermine the very privacy rights they brought suit to protect. Nonetheless, at the close of trial, at Armstrong's request, and over appellants' objections, the court admitted into evidence and ordered unsealed a small percentage of the thousands of documents held under seal by the clerk on the ground that they were relevant to Armstrong's defense. These documents were unsealed, and quotations from them and information derived from them entered the trial transcript and pleading file of the case.

On June 20, 1984, Judge Breckenridge issued a Memorandum of Intended Decision, (Exhibit A), which became a Statement of Decision by Minute Order dated July 20, 1984. (Ex. B.) The decision included findings of liability on the part of Armstrong for conversion, breach of fiduciary duty, breach of confidence and invasion of privacy. Judge Breckenridge's Decision ordered certain documents the court had admitted into evidence to be unsealed, but a series of appeals effectively kept these papers under seal until December 1986, when they

were returned to CSC as part of the settlement agreement described below.

After lengthy negotiations, the parties presented Judge Breckenridge on December 11, 1986, with a settlement of Armstrong's countersuit and the injunctive portion of appellants' claims against Armstrong. The injunctive claims were mooted by the return to plaintiff of all but six of the documents which were kept in the court's files because they were in controversy in pending litigation in another case. The returned documents included all documents that had been entered into evidence. An integral, indispensable part of that settlement was the sealing of the court's record[1/] and the stolen documents still held by the court.

The sealing aspect of the settlement was documented in the stipulated Sealing Order executed and entered by Judge Breckenridge on December 11, 1986, (Ex. C):

> The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

Ex. C at 2. The cross-complaint was dismissed with prejudice by Judge Breckenridge on that same day, December 11, 1986. (Order Dismissing Action With Prejudice, Ex. D.)

On October 11, 1988, almost two years after the settlement of the case and sealing of the record, non-party Bent Corydon filed his motion to unseal the file. Los Angeles

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1. Because of the court's evidentiary rulings, quotations and information from the private documents did appear in the transcript of the trial and the pleading file.

Superior Court Judge Geernaert went far beyond what Corydon requested and ordered the files totally unsealed. In its July 29, 1991 decision, this Court ruled that the unsealing by Judge Geernaert had been improper, and ordered the files resealed. The Court ruled, however, that the appellate files were not to be sealed, but that plaintiff could move for a sealing order.

The record on appeal consists of various categories of documents, primarily the trial transcripts, trial exhibits, including those which were sealed documents which Judge Breckenridge allowed into the trial record, and briefs discussing those exhibits in detail. Because of the findings of the trial court with respect to appellants' prima facie case against defendant on several causes of action, the fact that the documents involved were stolen from plaintiff in the first place, the permeation of the record with the documents or discussion of them, and the negotiated agreement of the parties that the record be sealed, it is appropriate for this Court to seal portions of the record on appeal as well.

III.

THE APPLICABLE LEGAL STANDARDS PERMIT SEALING OF THE COURT FILE IN THIS CASE

The United States Supreme Court has long recognized as an "uncontested" proposition that "the right to inspect and copy judicial records is not absolute" and that "every court has supervisory powers over its own records and files. . . . " Nixon v. Warner Communications, Inc. (1978) 435 U.S. 589, 598, 98 S.Ct. 1306; see, Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 629, quoting in

Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 783, 136 Cal.Rptr. 821, 824 ("Clearly a court has inherent power to control its own records to protect the rights of litigants before it. . . ."). The Supreme Court has explained that denial of access to judicial records may be appropriate in a variety of situations, including for the protection of privacy interests. Nixon v. Warner Communications, 435 U.S. at 598.

When the Court rendered its decision in this case, its discussion of the sealing of appellate files relied on Champion v. Superior Court (1978) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, a recent case which expounded criteria for the sealing of a record on appeal or portions thereof. The court in Champion noted that the California Rules of Court provided no guidance for its decision, but that appellate courts could adapt to their use the procedures outlined in cases discussing trial court sealing orders. Based upon those cases, the court ruled that parties seeking a sealing order should segregate the documents which should be sealed from those which should not, and should present a factual declaration which explains the needs of the particular case. Id. at 788, 247 Cal.Rptr. at 630. Any such sealing request was itself required by the Champion court to be filed publicly. The arguments in support of sealing were to be presented in a general, non-confidential manner to the extent possible. Id. at 788-789, 247 Cal.Rptr. at 631.

The Court in Champion quoted the opinion in Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 782-783, 136 Cal.Rptr. 821, 824, where the general rule was stated that

public records should be kept open to the public, but that "countervailing public policy might come into play as a result of events that tend to undermine individual security, personal liberty, or private property, or that injure the public or the public good." A number of factors in this case militate in favor of a conclusion that the record on appeal should be sealed based on such considerations.

First, this case involves property and privacy rights of plaintiff and Intervenor Mary Sue Hubbard, as found by the trial court, which fall within the category of "countervailing public policy." The case arose because defendant violated those rights by stealing the proprietary documents, to which he had no legal right. That this is such a case is one factor warranting the sealing of the files. The nature of the documents stolen -- consisting of personal, private, confidential and nonpublic documents -- is a second factor which lends itself to a conclusion that the files should be sealed.

The public policy implications of an unsealing are underscored by the constitutional protection which the right of privacy is afforded in California; see California Constitution, Article 1, § 1, against both governmental and nongovernmental invasions. Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841-42. California, in fact, provides broader constitutional protection for privacy rights than does the federal constitution. See, City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, 130 n.3, 164 Cal.Rptr. 539, 543 n.3. Personal documents and

information derived from them clearly are protected by the right of privacy in California. E.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; Division of Medical Quality v. Gherardini (1979) 93 Cal.App.3d 669, 678, 156 Cal.Rptr. 55, 60-61.

When a constitutional right to privacy is implicated, the courts do not merely balance that right against the right of access to records. Rather, in such cases the judicial records are presumptively placed under seal. See, Richards v. Superior Court (1978) 86 Cal.App.3d 265, 150 Cal.Rptr.77 (party producing private financial information through discovery is presumptively entitled to a protective order limiting disclosure only to counsel for the other party and only for use in that litigation). Only specific, compelling state interests can overcome that presumption -- and those interests must be expressly articulated by the trial court. See, id. at 272, 150 Cal.Rptr. at 81 ("substantial reason ... related to the lawsuit" is required for disclosure); Britt v. Superior Court (1978) 20 Cal.3d 844, 856 n.3, 143 Cal.Rptr.695, 702 n.3, 574 P.2d 766; Gunn v. Employment Development Dep't. (1979) 94 Cal.App.3d 658, 156 Cal.Rtpr. 584.

Privacy rights, along with trade secrets and other limited types of rights, have long been held to warrant sealing of records. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. at 598; Brown & Williamson Tobacco Corp. v. F.T.C. (6th Cir. 1983) 710 F.2d 1165, 117 cert. denied, 465 U.S. 1100 (1984).

In the analogous area of trade secrets, it is routine for

courts to seal judicial records, in order to:

> [P]rotect the very rights which parties have filed suit to vindicate. The most thorough review of the decisional law in this area states that the object of such safeguarding procedures is, of course, to prevent, so far as possible, the litigation designed to enforce rights in the trade secret from being itself destructive of secrecy and the value of the subject matter of the litigation.

Annot. 62 A.L.R.2d 509, 513. Thus, cases are legion in which courts have ordered that testimony and exhibits regarding business secrets be submitted in camera, sealed and impounded. E.g., A.O. Smith Corp. v. Petroleum Iron Works Co. (6th Cir. 1934) 73 F.2d 531, 539 note, modified on other grounds (6th Cir. 1935) 74 F.2d 934 (trial and appellate records sealed); Vitro Corp. v. Hall Chemical Co. (6th Cir. 1958) 254 F.2d 787, 788 (affirming trial court order impounding transcripts, exhibits and briefs).

Judge Breckenridge was aware in entering the sealing order that the privacy interest of appellants was exceptionally strong. He specifically found that appellants proved a prima facie case of conversion and invasion of privacy. They sought and obtained the sealing order to protect private information quoted or derived from their documents which had been admitted into evidence over their objection. Privacy rights in personal documents and information are entitled to constitutional protection in California. See, e.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; California Constitution, Article 1, § 1; Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841. Appellants' privacy

interest in this material will be irreparably harmed if the entirety of the court file is opened to the public.

Numerous courts and commentators have inveighed against such a perverse judicial exacerbation of the very intrusion that a plaintiff seeks to remedy. In United States v. Hubbard (D.C.Cir. 1981) 650 F.2d 293, the Court of Appeals reversed a trial court's order unsealing private Church of Scientology documents. The single most important element in the Court of Appeals decision was the fact that the documents had been introduced as exhibits in a hearing brought on -- as in the instant case -- for the very purpose of protecting defendants' constitutional and common law right of privacy. The court noted that it would be ironic indeed if "one who contests the lawfulness of a search and seizure were always required to acquiesce in a substantial invasion of those privacy interests simply to vindicate them." Id. at 321. The court's order to continue the seal was thus intended to neutralize the "untoward" fact that the mere "initiation of a privacy action itself involves the additional loss of privacy" and "normally multiplies the very effect from which relief is sought." Id. at 307 n.52 (quoting Gavison, Privacy and the Limits of the Law, 89 Yale L.J. 421, 457 (1980), and Emerson, The Right of Privacy and Freedom of the Press, 14 Harv. C.R. - C.L.L. Rev. 329, 348 (1979), respectively). In the instant case, this "most important element" is even more compelling. Appellants here made every effort to vindicate their privacy interests without doing them further damage. Whereas in Hubbard, the documents

were introduced into evidence by the proponents of confidentiality, in this case the proponents opposed the introduction of the documents. Perhaps even more important, while the documents in Hubbard were lawfully seized pursuant to a judicially authorized search warrant, the documents in this case were unilaterally "seized" by a private individual without probable cause and without prior judicial review. The intrusion on privacy is therefore more severe -- and any countervailing justification for publicizing the documents and court records reflecting information from them is correspondingly weaker.

The record on appeal in this case consists of the trial transcripts, the documents constituting the appendix, and the various briefs filed in connection with the appeal. Many of these documents contain some discussion of the converted documents which were sealed by the trial court, as discussed in greater detail in the declaration of Kenneth Long, the individual who worked as CSC's representative in connection with this case, and who is familiar with the appellate record. Because of the compelling reasons discussed herein, and particularly the fact that many of the documents in the appellate record, other than the briefs, are the same documents that have been sealed below for nearly five years, portions of the appellate record should also be sealed.

Another compelling factor warranting sealing of the record on appeal is the fact that there was a negotiated settlement between the parties which provided for sealing and was approved by the trial court, and weighs heavily in favor of sealing of the

identical documents which exist in the appellate record. It is the policy of California's courts to encourage settlements and to enforce judicially supervised settlements. Phelps v. Kozakar (1983) 146 Cal.App.3d 1078, 1082, 194 Cal.Rptr. 872, 874; Fisher v. Superior Court (1980) 103 Cal.App.3d 434, 437, 440-441, 163 Cal.Rptr. 47, 49, 52. The acceptance of orders sealing judicial records as necessary and proper provisions of settlement agreements is supported by reported cases containing references to such orders without criticism or comment. See, e.g., Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 628 (requiring an assertion of need for continued sealing when documents are submitted to be sealed in the appellate court); Owen v. United States (9th Cir. 1983) 713 F.2d 1461, 1462.

In In re Franklin National Bank Securities Litigation (E.D.N.Y. 1981) 92 F.R.D. 468, aff'd sub nom. Federal Deposit Insurance Corp. v. Ernst & Ernst (2nd Cir. 1982) 677 F.2d 230 the confidentiality order -- insisted on by one party -- was a critical factor in the settlement of the case. Two years after the case was settled and the order was entered, a non-party moved to intervene to request that the order be modified. The district court held that the "strong public policy favoring settlements of disputes" and "the importance of the stability of judgments and settlements, argue strongly against modification of the order," and that the "[l]apse of time also works against intervenors' position." 92 F.R.D. at 472. The court stated:

> The settlement agreement resulted in the payment of substantial amounts of money and

> induced substantial changes of position by many parties in reliance on the condition of secrecy. For the court to induce such acts and then to decline to support the parties in their reliance would work an injustice on these litigants and make future settlements predicated upon confidentiality less likely.

Id. at 472. The principles which underlie the ruling in the Franklin litigation apply as well to the sealing of portions of the appellate court file. Other parties to the lawsuit reached a partial settlement of the case -- which included a monetary settlement of Armstrong's cross-complaint for monetary damages -- in reliance on the order sealing the file. For the same documents which were sealed as a result and other documents discussing the sealed papers, created in relation to the appeal, to be unsealed in the appellate court, works a serious injustice on the plaintiffs.

Indeed, a similar situation to this case was presented most recently to the Eleventh Circuit Court of Appeals in Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip.Op. 4625 (Exhibit E). In that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions. The Church brought contempt proceedings against Wakefield, and sought to have the proceedings in camera, in order to protect the very privacy rights placed at issue by Wakefield's conduct. According to the Eleventh Circuit, the district court ordered that contempt proceedings commence before a magistrate, and closed the proceedings to the public and the press stating:

> [D]ue to plaintiff's complete and utter

> disregard of prior orders of this court, the court concludes that any restriction, short of complete closure would be ineffective. . . . Publicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases.

Ex. E, Slip.Op. at 4627.

Various newspapers protested and appealed the closure order. At the conclusion of the closed proceedings, the magistrate found that Wakefield had wilfully violated the court's injunction, and recommended criminal contempt proceedings. The district court granted the newspapers access to some of the transcripts of the hearings, but refused to permit them access to those which discussed the terms of Wakefield's settlement agreement -- that is, those portions of the proceedings which were permeated with discussions of matters which Wakefield and the Church had agreed to keep confidential, and which the Church had brought contempt proceedings to protect. On appeal by the newspapers, the Eleventh Circuit upheld the privacy interests which the Church sought to protect, and refused to grant public access to any more of the record. Id. at 4629 - 4630.

Wakefield demonstrates that the deliberate interjection into judicial proceedings of matters which are unequivocally private to one of the parties, by a recalcitrant litigant who refuses to bend to the orders of the court, should not and must not be permitted to subvert the constitutional protections of the privacy interests of innocent litigants. So, here, this Court should not permit the litigation surrounding the Church's demonstrated privacy interests to subvert their ultimate

protection.

In this case, the trial judge, Judge Breckenridge, in his sound discretion, ordered the sealing of the trial record to facilitate a settlement of this case and to permit appellants to achieve the bargained-for benefit in privacy and property for which they brought the underlying lawsuit. The bargain of the parties which this Court found was to be upheld, not having been challenged for two years after its negotiation and effectuation, is rendered somewhat meaningless if the appellate files are not sealed. If the filing of an appeal to vindicate the right to have files remain sealed results in a ruling that the files are to be sealed in one court but not in another, then the right is nugatory. The challenge of a private litigant two years after the sealing agreement did not make appropriate the unsealing of the files below. It should not do so in this Court either.

Finally, the fact that appellants here were obliged to use the courts to protect their privacy interests is further reason to impose a seal on the appellate record here. In Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 136 Cal.Rptr 821, the court emphasized that the family had alternatives to reliance on the courts and could have "eschew[ed] court-regulated devices for transmission of inherited wealth and rel[ied] on private arrangements such as inter vivos gifts, joint tenancies, and so-called 'living' or grantor trusts." Id. at 783-84, 136 Cal.Rptr. at 824. The appellants here had no such alternatives for private action. They had no mechanism for recovery of the converted documents other than

bringing this lawsuit. Self-help, in the form of "seizing the documents from Armstrong," was certainly not appropriate, and no court would wish to encourage such action by penalizing a party for seeking to preserve its privacy rights through the courts.

Consideration of the factors above warrants that sealing of the appellate file should be granted. Accordingly, this Court should seal those portions of the appellate record designated in paragraph 8 of the attached Declaration of Kenneth Long.

IV.

CONCLUSION

This case arises out of the wrongdoing of defendant in converting private documents, invading the privacy of Intervenor Mary Sue Hubbard, breaching confidences, and breaching his fiduciary duty to plaintiff. Thus, from its inception, the case deals with violations of plaintiff's and Intervenor's rights. This suit was the only method of vindicating those rights, and it resulted in some of the confidences sought to be protected being revealed in documents which would ordinarily be public. The parties settled the suit and stipulated to the sealing of the files, and the trial court approved that settlement. The fact that this appeal has been filed should not negate the privacy and property interests involved, which weigh heavily in favor of a conclusion that all portions of the record containing stolen documents or

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portions or discussions of them should be sealed both in the trial court and on appeal.

Dated: September 11, 1991

Respectfully submitted,

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BOWLES & MOXON

By: Helena K. Kobrin
Helena K. Kobrin

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Appellant

MICHAEL LEE HERTZBERG
Counsel for Intervenor and
Appellant MARY SUE HUBBARD

DECLARATION OF KENNETH LONG

I, KENNETH LONG, hereby declare:

1. I am over the age of eighteen. I have been employed by Church of Scientology of California ("CSC") for 9 years as a paralegal, acting as CSC's representative to assist various of its attorneys during that time period. I have personal knowledge of the matters set forth below and would and could competently testify thereto if called upon to do so.

2. During the course of my employment as a paralegal, I have worked extensively on the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. C 420153, and Appellate Case No. B025920 ("Armstrong"). I am well familiar with the documents on file in Armstrong, both in the Superior Court and on appeal.

3. The trial transcripts which are part of the Armstrong record consist of 4,346 pages of testimony. The single lengthiest testimony is that of defendant, Gerald Armstrong. His testimony covers approximately 852 pages. Throughout Armtrong's testimony, there was discussion of the documents converted by Armstrong that had been ordered returned to the court and sealed by Judge Cole near the inception of the suit.

4. Discussion of the contents of these documents also occurred during the testimony of other witnesses. Vaughn Young testified for about 136 transcript pages and Laurel Sullivan for roughly 425 pages. Their testimony also included discussion of the stolen documents which had been sealed by the trial court. Thus, between Armstrong, Sullivan and Young,

nearly a third of the trial transcripts contain discussions of the very materials for which suit was originally brought to effect return and maintain privacy.

5. The Armstrong appellate briefs also contain many references to, and descriptions and discussions of the stolen documents which were sealed during this litigation and which were returned to plaintiff upon settlement of the lawsuit in December 1986. A material term of that settlement was the return of those documents and the sealing of the record in this case in order to protect the privacy and property interests of CSC and Intervenor Mary Sue Hubbard, who had initiated this action to vindicate those rights.

6. The appendices filed in the appellate court contain numerous documents that discuss the stolen documents and their contents, or matters arising from those documents. Out of 22 documents in the B038975 appendix, ten contain such references: Exhibits C, H, I, K, L, N, O, Q, U, and V. The appendix for B025920 also contains documents with such references, including pages 57-60 and 251-277.

7. All of the documents in the Armstrong appellate record, with the exception of the appellate briefs, have been sealed below since December 11, 1986 as a result of the stipulation of the parties upon settlement of the case.

8. Accordingly, on behalf of CSC, I respectfully request the Court to seal the testimony of Gerald Armstrong, Vaughn Young and Laurel Sullivan in the Armstrong Reporter's Transcript, pages 57-60 and 251-277 in Armstrong Appellant's Appendix, pages 4-28 of Respondent's Brief in Armstrong, and

Exhibits C, K, L and N in the "Appendix of Appellants" filed in Appeal No. B038975. If these portions of the appellate record are also sealed, it will preserve the property and privacy interests which CSC has fought to protect by its filing of the Armstrong suit, and which the trial court recognized in sealing the documents at the outset of the litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California this 10th day of September, 1991.

Kenneth Long

Kenneth Long

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153 MEMORANDUM OF INTENDED DECISION
MARY SUE HUBBARD, Intervenor.	

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may

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1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion

and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was t take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

"Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the

merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history,

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2. Exhibit 500-HHHHH.

background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing,

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3. See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost

4. Exhibit AAA.

lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The

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5. "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

Paul G. Breckenridge Jr.

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states

that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went

to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH'DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980,

to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaugh Young. Controller Archives and Guardian Office Archives had n connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds o thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted t

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.

"That's what I'm trying to remedy and prevent.

. . .

"To say that LRH is not capable of hype, errors or lies is certanly ^sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.

. . .

". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in

his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set

up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he

never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway

automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

EXHIBIT B

DEPT. 57

Date JULY 20, 1984 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES JUL 23 1984

HONORABLE P G BRECKENRIDGE, JR JUDGE | R HART Deputy Clerk

J ANDERSON, COURT ATTENDANT Deputy Sheriff | NONE Reporter

(Parties and counsel checked if present)

C 420 153
CHURCH OF SCIENTOLOGY OF CALIFORNIA,
VS
GERALD ARMSTRONG,

Counsel for Plaintiff

Counsel for Defendant

MARY SUE HIBBARD - INTERVENOR

NATURE OF PROCEEDINGS REQUEST OF DEFENDANT THAT MEMORANDUM BE DEEMED STATEMENT OF DECISION

Plaintiffs not having requested such, the Court grants defendant's motion, and the Memorandum of Intended Decision will henceforth be deemed the Court's "Statement of Decision".

A copy of this minute order is mailed to all counsel.

049

MINUTES ENTERED
7-20-84
COUNTY CLERK

(1) DEPT 57

EXHIBIT C

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Attorneys for Plaintiff and Cross-Defendant
CHURCH OF SCIENTOLOGY OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant. AND RELATED CROSS-ACTION.	Case No. C 420153 STIPULATED SEALING ORDER

Pursuant to and as a provision of a Settlement Agreement of the parties hereto, which is dispositive of all claims of the above captioned case, the parties hereby voluntarily enter into the following stipulation:

1. Defendant/Cross-Complainant hereby agrees that the Clerk of the Court will produce to Plaintiff/Cross-Defendant

the following records in the Custody of the Clerk:

a) All those documents surrendered to the custody of the Clerk of the Court by Michael Flynn and the law firm of Contos & Bunch in September 1982, pursuant to the Order of Judge John J. Cole in the above captioned case, dated September 4, 1982; and b) all exhibits entered into evidence or marked for identification at the trial of this case in May - June of 1984.

2. The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

3. It is agreed between the parties that should the Court require a motion or any further pleadings to effectuate and sign this Stipulated Sealing Order, the parties will jointly comply with the Court's further orders, if any.

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4. This agreement is effective as of the date of the dismissal of this case.

DATED: 12-8, 1986

~~BRUCE BUNCH~~ JULIA DRAGOJEVIC
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Counsel for Plaintiff/Cross-Defendant

IT IS SO ORDERED.

/S/ PAUL G. BRECKENRIDGE, JR. DEC. 11, 1986 Dated
HON. PAUL G. BRECKENRIDGE

052

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERALD ARMSTRONG, Cross-Complainant, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Cross-Defendant.	No. C 420 153 (Severed Action) ORDER DISMISSING ACTION WITH PREJUDICE

ORIGINAL FILED
DEC 11 1986
COUNTY CLERK

Upon consideration of the parties' Stipulation for Dismissal, the "Mutual release of All Claims and Settlement Agreement" and the entire record herein, it is

ORDERED AND ADJUDGED:

1. That this action is dismissed with prejudice.

2. That an executed duplicate original of the parties' "Mutual Release of All Claims and Settlement Agreement" filed herein under seal shall be retained by the Clerk of this Court under seal.

Dated: December 11, 1986

/s/ PAUL G. BRECKENRIDGE, JR.
Hon. Paul G. Breckenridge

EXHIBIT E

Margery WAKEFIELD, Plaintiff,

v.

The CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant–Appellee,

Times Publishing Company and Tribune Company, Appellants.

No. 89–3796.

United States Court of Appeals, Eleventh Circuit.

Aug. 12, 1991.

Religious organization sought orders to show cause why plaintiff, which had brought suit against organization, should not be held in civil and criminal contempt for violating confidentiality requirement of settlement agreement. Newspapers' motions for access to contempt hearings and related pleadings, proceedings, and records, to determine if their reporters' qualified privilege prevented them from being compelled to testify, was denied by the United States District Court for the Middle District of Florida, No. 82-1313 CIV-T-10, Elizabeth A. Kovachevich, J., and newspapers appealed. The Court of Appeals, Hatchett, Circuit Judge, held that newspapers' appeal from order denying them access to contempt hearings did not fall within capable of repetition, yet evading review exception to mootness doctrine.

Case dismissed.

1. Federal Courts ⇐721

Newspapers' appeal from order denying newspapers' motions for access to evidentiary hearing at which hearing newspaper reporters had been subpoenaed did not satisfy requirements for capable of repetition, yet evading review exception to mootness doctrine after hearing was held, and newspaper which had reported on case did not seek to intervene until two years after closure, and case involved unique circumstances, such as plaintiff's "constant disregard and misuse of the judicial process," on which closure order was based. U.S.C.A. Const.Amend. 1.

2. Federal Courts ⇐611

Parties may make alternative claims, change claims, or sometimes file inconsistent claims, but may not do so in appellate court. Court of Appeals reviews case tried in district court and does not try ever-changing theories parties fashion during appellate process.

3. Federal Courts ⇐723

When addressing mootness, Court of Appeals determines whether judicial activity remains necessary.

4. Federal Courts ⇐723

Three exceptions to mootness doctrine exist: issues are capable of repetition yet evading review; appellant has taken all steps necessary to perfect appeal and to preserve status quo; and trial court's order will have possible collateral legal consequences.

5. Federal Courts ⇐723

Capable of repetition, yet evading review exception to mootness doctrine applies if challenged action is of too short a duration to be fully litigated prior to its cessation, and reasonable expectation exists that same complaining party will be subject to same action again.

6. Federal Courts ⇐723

Mere hypothesis or theoretical possibility is insufficient to satisfy test for capable of repetition, yet evading review exception to mootness doctrine.

Appeal from the United States District Court for the Middle District of Florida.

Before HATCHETT and COX Circuit Judges, and HENDERSON, Senior Circuit Judge.

HATCHETT, Circuit Judge:

We dismiss this case, which at one time touched upon important first amendment issues, because the case has been rendered moot.

FACTS

Margery Wakefield and three other plaintiffs alleged that the Church of Scientology of California (the Church) committed various wrongful acts against them. On August 14, 1986, Wakefield, the other plaintiffs, and the Church entered into a settlement agreement which included provisions enjoining Wakefield and the other plaintiffs from discussing, with other than immediate family members, (1) the substance of their complaints against the Church, (2) the substance of their claims against the Church, (3) alleged wrongs the Church committed, and (4) the contents of documents returned to the Church. The district court approved the settlement agreement, sealed the court files, and dismissed the case with prejudice. The dismissal order specifically gave the court jurisdiction to enforce the settlement terms. Nonetheless, Wakefield publicly violated the settlement agreement's confidentiality provisions.

In 1987, both the Church and Wakefield filed motions to enforce the settlement agreement. The district court requested that a magistrate judge address whether either party had violated the settlement agreement. On September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions. On November 3, 1988, the Times Publishing Company (the Times), which publishes the *St. Petersburg Times*, moved to intervene in this lawsuit, to unseal the court files, and to gain access to any contempt hearings. In its motions, the Times alleged that the sealed court records and closed proceedings violated its and the public's constitutional and common law rights of access to judicial proceedings and records. In opposing the motions, the Church argued that they were untimely and barred by laches. On May 16, 1989, the district court adopted the magistrate judge's report, issued a preliminary and permanent injunction against Wakefield, and referred the Times's motion to intervene to the magistrate judge.

Notwithstanding the court's injunction, Wakefield continued to publicize the lawsuit. Thus, on July 18, 1989, the Church sought orders to show cause why Wakefield should not be held in civil and criminal contempt. The Church also sought damages, costs, and attorney's fees. To support its requests, the Church submitted excerpts of newspaper, television, and radio interviews attributed to Wakefield.

On August 15, 1989, the magistrate judge submitted a report and recommendation addressing Times's motion to intervene. He recommended that absent a compelling reason, all future proceedings and the court files, except for documents pertaining to the settlement, should be open and that Times be allowed to intervene. Due to events discussed later in this opinion, the district court has not issued a final order on these issues.

The district court scheduled an evidentiary hearing to address the Church's contempt motion. As witnesses at the hearing, the Church subpoenaed reporters for the *St. Petersburg Times* and the *Tampa Tribune*. Consequently, the Times, and the Tribune Company, which publishes the *Tampa Tribune* (the newspapers), filed motions for access to hearings, pleadings, proceedings, and records related to the contempt hearings in order to determine if their reporters' qualified privilege prevented them from being compelled to testify.

PROCEDURAL HISTORY

On September 11, 1989, the district court held an *in camera* proceeding to rule on the newspapers' motions. The district court denied the newspapers' motions for access to the hearings because the Church subpoenaed the reporters only to establish the source and accuracy of the statements attributed to Wakefield. The district court also held that the reporters waived any privilege by publicly attributing the statements to Wakefield.

In considering the newspapers' motions, the district court stated, "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective." It further held that "[p]ublicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases." Thus, the district court closed the contempt proceedings to the public and the press referring further proceedings to a United States Magistrate Judge. The magistrate judge began contempt hearings on September 11, 1989.

On September 18, 1989, the newspapers filed a Notice of Appeal, a Motion for Expedited Appeal, and a Motion for Stay Pending Appeal. On September 29, 1989, this court granted expedited appeal, but denied the newspapers' emergency motion for a stay of the contempt proceedings pending resolution of the expedited appeal.

On appeal, the newspapers argued that the closure violated their first amendment and common law rights of access to judicial proceedings. They contended that the public's right of access outweighs the rationale for keeping the settlement agreement confidential. The Church contended that Wakefield's "open and defiant contumacious conduct" mandated closure and that the newspapers did not enjoy an absolute constitutional or common law right of access to civil proceedings.

During our first oral argument, we learned that the newspapers had never requested the district court to allow access to the contempt hearing transcripts. Since the hearings had been completed before oral argument, we issued a November 17, 1989, order which temporarily remanded the case to the district court for the limited purpose of allowing the newspapers to seek access to the contempt hearing transcripts. The order further instructed the district court to rule on such a request "within a reasonable time."

On June 25, 1990, eight months after the last contempt hearing, the magistrate judge submitted a report and recommendation which concluded that Wakefield had willfully violated the court's injunction. He further held that while a civil contempt finding could be appropriate, he suggested the case be referred to the United States Attorney's office for prosecution on the criminal contempt charges. The district court has not issued a final order addressing whether Wakefield is in civil or criminal contempt.

Furthermore, almost a year after our temporary remand, the district court had not ruled on the newspapers' requests for access to the contempt hearing transcripts. Thus, the newspapers filed a motion requesting that this court clarify the "reasonable time" language in the November 17, 1989, order. In order to speed finalization of this matter, this court denied the clarification motion, but issued an order stating, "[a]fter December 3, 1990, this court will entertain a request for relief addressing the delay that has occurred since our remand to the district court provided that relief has been sought." After this clear signal for action, the district court issued a November 21, 1990, order unsealing the civil contempt proceeding transcripts, except for those portions which disclosed the settlement agreement terms.

On March 21, 1991, the newspapers filed a motion requesting a second oral argument, which the Church opposed. On April 18, 1991, we granted the newspapers' motions for a second oral argument, instructing the parties to address (1) whether the case was moot, (2) whether a case or controversy remained, and (3) whether a reasonable possibility of settlement existed.

ISSUE

The sole issue we discuss is whether this case is moot.

CONTENTIONS

The newspapers argue that this case is not moot because the court can grant relief which will affect the parties by ordering release of all the judicial documents relating to the contempt hearing and the unreleased transcript pages.

The Church contends that this case is moot and does not present a case or controversy which this court may address. It emphasizes that the newspapers initially sought access to the proceedings to represent their reporters, then under subpoena. It argues that this aspect of the case is absolutely moot because the Church released the reporters from their subpoenas.

DISCUSSION

[1, 2] This case, at its beginning, presented an interesting and important issue: under what circumstances may civil judicial proceedings be closed to the public and the press? Unfortunately, the newspapers did not prevail in their efforts to halt the proceedings; this court denied their motions to stay the proceedings pending the expedited appeal. The newspapers argue that we should address whether a constitutional right of access to civil proceedings exists. To do so, however, would constitute an advisory opinion. The hearing that is the subject of this case terminated almost two years ago. Although the newspapers have an interest in the constitutional question, perhaps for future cases, no "live" case or controversy remains in this case. The hearings have been completed, and the newspapers have been given the hearing transcripts.[1]

[3] When addressing mootness, we determine whether judicial activity remains necessary. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 n. 10 (1975). "A case becomes moot, and therefore, nonjusticiable, as involving a case or controversy, 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *B & B Chemical Co. v. United States E.P.A.*, 806 F.2d 987, 989 (11th Cir.1986) (quoting *United States v. Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)).

[4] Three exceptions to the mootness doctrine exist: (1) the issues are capable of repetition, yet evading review; (2) an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo; and (3) the trial court's order will have possible collateral legal consequences. *B & B Chemical Co.*, 806 F.2d at 990.

The newspapers argue that this case falls within the "capable of repetition yet evading review" mootness exception. They argue that a case is not moot if this court can grant relief that affects the interested parties. *Airline Pilots Association v. U.A.L. Corp.*, 897 F.2d 1391 (7th Cir.1990); *Wilson v. U.S. Department of Interior*, 799 F.2d 591 (9th Cir.1986). Thus, they assert that we should order the release of all the judicial documents related to the contempt hearing and the unreleased transcript pages. In their view, these documents are essential so that the public can understand what happened to Wakefield.

[5] The newspapers do not meet the exceptions' two conditions in order for the capable of repetition, yet evading review exception to apply: (1) the challenged action must be of too short a duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist that the same complaining party will be subject to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975).

As an example of the action's short duration, the newspapers assert that they acted promptly by filing during the contempt proceeding's adjournment a motion for a stay pending the appeal of the district court's closure. The record refutes this assertion. The underlying case has been in the federal court system since November 29, 1982. Even prior to the 1986 closure, the Times reported on the Wakefield case, but not until 1988, did Times seek to intervene. Additionally, the newspapers did not appeal the closure order until the contempt hearing had been adjourned for a continuance. These facts refute the newspapers' assertions of the action's short duration.

Likewise, the newspapers cannot satisfy the second condition. In addressing the

1. It is also noteworthy that the newspapers have changed their claims as the case has progressed. They first sought access on constitutional and common law grounds, then they sought access to protect their reporters from compelled testimony. Finally, with full knowledge that the hearings had been completed, the newspapers never sought the hearing transcripts until prompted to do so by this court. Now, with all but eleven pages of the hearing transcript, the newspapers seek the eleven pages on constitutional and common law grounds. Many of the theories presented to this court were never presented to the district court. Parties may make alternative claims, may change claims, may sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not try ever changing theories parties fashion during the appellate process.

second condition, the newspapers argue that if this court does not offer judicial guidance, a "reasonable expectation" exists that this controversy will occur again. They specifically state that they "continue to expect and suspect that secret church proceedings are being or will be held," and suspect that the Church will bring contempt proceedings against the other plaintiffs. The record does not support these suspicions.

[6] This case involves unique circumstances which are not easily repeated. Wakefield's constant disregard and misuse of the judicial process mandated partial closure. Since Wakefield's contempt hearing concluded, the Church has not instituted nor has the district court conducted any additional contempt hearings, show cause hearings, or *in camera* proceedings. Furthermore, nothing indicates that the Church contemplates these actions. Although the newspapers' suspicions that secret church and contempt proceedings will occur constitute a theoretical possibilty, a mere hypothesis or theoretical possibility is insufficient to satisfy the test stated in *Weinstein*. *Morgan v. Roberts*, 702 F.2d 945, 947 (11th Cir.1983). Thus, no "reasonable expectation" exists that this controversy will occur again.[2]

The newspapers' interest in the important constitutional issue which was once alive in this case is understandable. Nevertheless, we must wait for another case with a current controversy, and with a well-developed record to address the issue. The fact that much of the delay in this case is attributable to a busy and overburdened federal district court is unfortunate.

Because the newspapers cannot satisfy the capable of repetition, yet evading review requirements, this case is moot. Accordingly, this case is dismissed.[3]

DISMISSED.

2. As earlier noted, the hearings were not halted because the newspapers did not prevail on their motions for stay pending appeal. We must assume that in the proper cases stays will be granted.

3. We express no opinion on whether the remaining eleven pages of the transcripts may properly be sought in another federal lawsuit.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On September 11, 1991, I caused to be served the foregoing document described as NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, California 94960

Toby L. Plevin
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

Los Angeles Superior Court
111 N. Hill Street
Los Angeles CA 90012

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on September 11, 1991, at Hollywood, California.

Helena K. Kobrin

Case Nos. B025920 and B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD

Intervenor-Plaintiff-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL; DECLARATION OF GERALD ARMSTRONG

Appeal from the Superior Court of the State of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

Gerald Armstrong
In Pro Per
P.O. Box 751
San Anselmo, CA 94960
(415)456-8450

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff-Appellant, and MARY SUE HUBBARD, Intervenor-Appellant, v. GERALD ARMSTRONG, Defendant-Respondent.	Case Nos. B025920 & B038975 LASC No. C420153 OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL

I

INTRODUCTION

Defendant Gerald Armstrong opposes plaintiffs' motion to seal the record on appeal. Plaintiffs have made no showing to justify sealing the record, by their own actions they have waived any privacy rights they are now seeking to protect, and such a sealing order would be both senseless and violative of rights senior to those plaintiffs hope to vindicate.

Plaintiffs ask this Court to seal these portions of the appellate record: in Appeal No B025920 the trial testimony of defendant and witnesses Vaughn Young and Laurel Sullivan, pages 57-60 and 251-277 in Appellants' Appendix and pages 4-28 of Respondent's Brief; and in Appeal No. B038975

Exhibits C, K, L and N in Appellants' Appendix. Plaintiffs claim that these portions contain discussions of or references to the documents which were the subject of the litigation below, and they argue that sealing these portions will preserve their property and privacy interests.

Plaintiffs have not only not demonstrated that they possess any property or privacy interests in the materials they seek to seal, but they have long since lost, through their employment of public courts in this case, their attacks on defendant in legal and other public arenas, and their unclean hands in the matter before this Court, the rights they once had.

But even if plaintiffs had not lost all their privacy rights in these materials the requested sealing would be an idle act in which the law does not engage. The vast majority of the pages plaintiffs want sealed are public documents which for over seven years have been broadly circulated. Sealing is also rendered a meaningless act because defendant could not be bound by such an order while plaintiffs continue to attack him and use themselves sealed materials in their attacks.

The superior rights regarding the materials plaintiffs want sealed are those of defendant whose safety from attack rests in part on the availability of information and the openness of court files, and those of the public who have a Constitutional right to precisely the kind of information these materials contain.

II

BY THEIR OWN CHOICES PLAINTIFFS SACRIFICED THEIR RIGHT TO SEAL THE RECORD

Although specifically discussing probate court files the California Court of Appeal in Estate of Hearst (1977) 67 Cal. App. 3d 777, 136 Cal. Rptr. 821 spells out the risk that every litigant who uses the courts accepts.

> "when individuals employ the public powers of state courts to accomplish private ends,[ ] they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed[ ] will be open to public inspection." Id at 783

Plaintiffs complain that unlike the appellants in Hearst they had no way of recovering the subject documents other than bringing the lawsuit or "seizing the documents" from defendant, which choice plaintiffs considered inappropriate. But those were not plaintiffs' only options; they were but the options plaintiffs' "fair game" policy mandated. Had plaintiffs eschewed fair game, acted decently toward defendant and desisted in their attacks 1/ it is entirely conceivable that none of the subject documents would have been made public through the court proceedings. As this Court noted in its decision of July 29, 1991 in Church of Scientology of California v. Armstrong, 283 Cal. Rptr.917, 924 "the conflict was created by plaintiffs, who threatened Armstrong with harm."

When plaintiffs chose after settlement of the cross complaint to maintain their appeal from the trial court's decision they again did so with full knowledge of the disclosure in the Court of Appeal of the contents of the file that had been sealed by stipulation between the parties. In fact plaintiffs in their briefs cite to documents they had removed from the court file following the December 1986 settlement 2/ , and quote directly from the

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1/ See, e.g. Defendant's trial exhibits PP Suppressive Person Declare of Gerry Armstrong of February 18, 1982, and M Suppressive Person Declare of Gerry Armstrong of April 22, 1982.

2/ See, e.g. Appellants' Brief (dated December 20, 1989) p. 9 and 14, quoting from trial Exhibit F, and p. 26, discussing exhibit AAA.

trial transcript they now seek to seal 3/. In Champion v. Superior Court (1988) 201 Cal. App. 3d 777, 247 Cal. Rptr. 630, which set out the procedure to be followed when seeking an order to seal documents in appellate records, the Court stated:

> "Parties must also be careful not to enter into stipulations in trial courts or to acquiesce to trial court confidentiality requests expecting that the stipulations or rulings will control the filing or lodging of documents in the appellate courts." Id at 789.

The Champion Court also concluded

> "that a party seeking to lodge or file a document under seal bears a heavy burden of showing the appellate court that the interest of the party in confidentiality outweighs the public policy in favor of open court records." Id at 788.

Plaintiffs not only did not meet their burden, they did not even seek, until seven years had elapsed, to seal any of the documents in the record on appeal. This Court found that third party litigant Bent Corydon's motion to unseal the Armstrong court file, which was brought within two years of the sealing, was untimely. Plaintiffs' motion to seal is no less so.

Two days prior to filing their motion to seal the record on appeal plaintiffs filed a Petition For Review in the California Supreme Court from this Court's July 29 order. Again plaintiffs have cited to trial exhibits which

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3/ See, e.g., Appellants' Brief, from defendant's trial testimony, p. 14, "nothing but an intelligence organization." (R.T. 1678-79), p. 21, "lied from his earliest youth all the way through and he was lying to me currently" (R.T. 1929)

are not available to the reviewing court 4/ and to portions of the record they seek to seal.5/ Plaintiffs have not filed a request to seal the record on appeal in the Supreme Court, and they are using the record they seek here to seal to forward their cause. Judicial estoppel would prevent the granting of plaintiffs' motion.

Defendant detailed what he knew of plaintiffs' acts against him in violation of the December 1986 settlement agreement in his declaration of March 15, 1990, filed in this appeal in support of Defendant's Reply To Appellants' Opposition To Petition For Permission To File Response And For Time, and his declaration of December 25, 1990, filed as Defendant's Appendix. These declarations and the exhibits thereto are of substantial consequence to the determination of rights of the parties herein, and defendant requests that this Court take Judicial Notice of them pursuant to California Evidence Code§452(d) (court records),§455 and §459(b) (reviewing court has same power as trial court in determining propriety of taking judicial notice of a matter). This Court did not consider these declarations in its decision "as they were not considered by the trial court," Armstrong at 922, but they are relevant to the sealing issue and now may properly be considered.

While plaintiffs falsely accuse defendant of violations of sealing orders in this case they have themselves violated the sealing orders, including by

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4/ See, e.g. Petition For Review, p. 9, trial exhibit AAAA, p. 11, trial exhibit F, p. 16, trial exhibit PP.

5/ See, e.g. Petition For Review, p. 15, "nothing but an intelligence organization." (R.T. 1678-79), p. 16, confrontations with private investigators (R.T. 1726, 1728, 2448)

use of the very trial exhibits they removed from the court file. 6/ But plaintiffs have not only not curtailed their use of the materials they move to seal, they actively pervert what these materials state. Such a perversion is contained within plaintiffs' motion. When refering to defendant's act of obtaining from author Omar Garrison documents he would use in defending himself, and sending these documents to the lawyer who would and did defend him, plaintiffs religiously employ the words "stole", "stealing" or "stolen". Plaintiffs' motion, pp. 1, 3, 5, 6, 8, 17. Stealing is a "felonious taking." Black's Law Dictionary, 4th Ed. Rev., 1583. The trial court and this Court specifically found defendant's "taking" of the subject documents not felonious, but justified. Plaintiffs now seek to have hidden from the world not only defendant's testimony, which the trial court relied on to understand defendant's justification, but the trial court's decision in which the judge's

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6/ Exhibits F,G,H,J and K to defendant's declaration of March 15, 1990 are affidavits of Kenneth Long executed in October 1987 and filed in the case of Church of Scientology of California v. Russell Miller & Penguin Books Limited in the High Court of Justice, Case No. 6140 in London, England. Mr. Long, e.g., swears that defendant "refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal," Ex. F, and "knowingly violated several court orders -- the August 24, 1982 court order to turn in all materials to the court and the June 20, 1984 court order sealing the documents.." Ex. J, Mr. Long appended to his affidavits several documents which had been entered into evidence at the trial in Armstrong and which plaintiffs had retrieved from the court file after the signing of the December 1986 "Mutual Release and Settlement Agreement," (emphasis added) and after the sealing pursuant to stipulation. See, e.g., Ex. F to defendant's declaration of March 15, 1990, affidavit of Kenneth David Long dated October 5, 1987. Document entitled "Wage and Tax Statement 1977" for "Gerald David Armstrong" is trial exhibit V; document entitled "Nondisclosure and Release Bond" is trial exhibit U.

understanding is expressed. Pp 251-277 in Appellants' Appendix in Appeal No. B025920 and Ex. C in Appellants' Appendix in Appeal No. B038975. Plaintiffs' intention is to seal parts of the record so that they can create confusion around what the record contains and misstate it in attacks on critics of their antisocial acts and attitude.

In the past two months plaintiffs have thrown caution to the wind in their attack on defendant's credibility, and are boldly using the fruits of a Scientology initiated illegal intelligence action they call the "Armstrong operation," which are included in the documents plaintiffs have "successfully" kept under seal in the Armstrong court file. Plaintiffs were apparently encouraged by this Court's decision in Armstrong which maintained the seal on the documents relating to the cross-complaint in the court file, because they have subsequently used them with abandon.

Plaintiffs-appellants utilize some tidbits from the "Armstrong operation" in their recently filed Petition for Rehearing in this Court, Petition for Rehearing, n.1, p. 6. They use their operation as grounds for a $120,792,850 lawsuit against 17 Federal (Treasury Department) agents. And they use it in an attempt to derail a lawsuit by former organization members in Federal District Court.

Exhibit A to the declaration of Gerald Armstrong filed herewith is a copy of the complaint filed August 12, 1991 in Church of Scientology International v. 17 Agents, No. 91-4301 SVW in US District Court, Central District of California. At page 14 is the claim that

> "The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID

> actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all church documents to the IRS for their investigation." Ex. A.

Attorneys for the Scientology organization in the 17 Agents case are also attorneys of record in Armstrong and are before this Court now asking for another sealing order.

Exhibit B filed herewith is a pleading entitled Further Response to Order of July 2, 1985; Request for Stay; Memorandum of Points and Authorities in Support Thereof; Declaration of John G. Peterson filed January 22, 1986 in Armstrong along with transcripts of the illegal videotape operation. Plaintiffs used these documents at that time in an effort to prevent defendant from obtaining his preclear folders from plaintiff organization. At p. 6 Mr. Peterson avers that:

> "Armstrong has admitted, in a videotaped interview, to creating forged documents for placement in Church files for the sole purpose of giving the false appearance of unethical or illegal actions committed by the Church; and [ ] Armstrong has admitted, in a videotaped interview, his intention to commit perjury, as well as advising others that proof is not required to make allegations." Ex. B.

This is a matter which plaintiffs have insisted be sealed in the trial court's file.

Exhibit C filed herewith is a pleading entitled "Supplemental Memorandum in Support of Defendants' Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie Bartilson" filed August 26, 1991 in Aznaran v. Church of Scientology of California, et al, No. CV 88-1786 JMI in US District Court for the Central District of California. At p. 5 the Scientology organizations state:

> "in November 1984 [ ] Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought." Ex. C.

Exhibit D filed herewith is a pleading entitled "Reply in Support of Defendants' Motion for Summary Judgment Based on Statute of Limitations" also filed August 26, 1991 in Aznaran. At p. 34 the Scientology organizations state:

> "Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church." Ex. D.

Scientology's reply is signed by Eric Lieberman who has been plaintiffs' attorney of record throughout the Armstrong appeals.

Exhibit E filed herewith is defendant's declaration executed on September 3, 1991 and filed in Aznaran to refute the charges made by the Scientology organization in their pleadings (Ex. C and D filed herewith) and in another pleading entitled "Defendants' Opposition to Ex Parte Application to File Plaintiffs' Genuine Statement of Issues [sic] Re Defendants' Motions (1) to Exclude Expert Testimony; and (2) for Separate Trial on Issues of Releases and Waivers: Request that Oppositions Be Stricken" also filed in Aznaran August 26, 1991, and filed herewith as Exhibit F.

Since the December 1986 settlement, plaintiffs have engaged in assault after assault on defendant's character and credibility rather than honestly face the malevolent nature of their fair game doctrine and the acts this philosophy spawns. 7/ The portions of the appellate record they now seek to seal contain the trial judge's observations of defendant's credibility 8/ and the record in toto supports the judge's assessment of defendant's credibility and confutes plaintiffs' calumny.

7/ See, e.g., Exhibit E to declaration of March 15, 1990, a document circulated by plaintiff organization in 1987, "Armstrong's numerous false claims and lies on other subject matters;" Exhibits F, G, H, J and K to 3-15-90 declaration, affidavits of Kenneth Long accusing defendant of sealing order violations; Exhibit H, "Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government;" Exhibit I to 3-15-90 declaration, affidavit of Sheila MacDonald Chaleff, "Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church;" Exhibit E to defendant's declaration of 25 December 1990, declaration of Kenneth Long dated March 26, 1990, "Armstrong had intentially perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States;" Exhibit C filed herewith , at p. 6, defendant's "criminal attitude;" Exhibit D filed herewith, at p. 2,3, "the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it."

8/ Memorandum of Intended decision in Armstrong, at p. 255 of Appellants' Appendix, " the basic thrust of [defendant's] testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial

Plaintiffs assert that they "made every effort to vindicate their privacy interests without doing them further damage;" Motion, p. 11, but in reality they have worked very hard to destroy whatever rights they once had. The trial court found in 1984 that "neither plaintiff has clean hands." Memorandum of Intended Decision, Appellants' Appendix at p. 251. Plaintiffs have a history of destruction of evidence. Memorandum of Intended Decision, Appellants' Appendix at p. 264, July 29, 1991 Opinion at p. 6. Here they have used the documents they want sealed in attacks on defendant. Plaintiffs' hands are still unclean in connection with the controversy before this Court so must be denied the relief they seek. See, e.g., Moriarty v. Carlson (1960) 184 Cal. App. 2d 51, 7 Cal. Rptr. 282, quoting from Lynn v. Duckel, 46 Cal. 2d 845, 299 P.2d 236:

> "The rule is settled in California that whenever a party who, as actor, seeks to set judicial machinery in motion and obtain some remedy, has violated conscience, good faith or other equitable principle in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf to acknowledge his right, or to afford him any remedy." Id at 850.

Footnote 8 continued

activities of the Church, and his dedication to the truth;" p. 257 of Appellants' Appendix, "the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis (sic) Edward Walters, Omar Garrison, Kima Douglas and Homer Schomer to be credible, extremely persuasive, and the defense of privilege or justification established or corroborated by this evidence.....In all critical and important matters, their testimony was precise, accurate, and rang true;" . R.T. at 2511, Judge Paul G. Breckenridge, Jr., commenting to plaintiffs' counsel during cross-examination of defendant, "all you are doing is convincing me that this man has a fabulous memory."

III

SEALING THE DESIGNATED PORTIONS OF THE RECORD ON APPEAL WOULD BE NONSENSICAL

The trial testimony of defendant, Vaughn Young and Laurel Sullivan originated in 1984 in open court attended by public and press. The testimony remained available to the public in the court file until the December 11, 1986 stipulated sealing. Judge Breckenridge stated at that time:

> "Of course, there have been innumerable people in the interim who have come forward and examined the file. I haven't the slightest idea who all those people are, but certainly we can't go back and retract from them whatever they have seen or observed or copied."

The testimony has been public in the record on appeal since 1984.

The reporters' transcripts of proceedings were obtained by defendant throughout the month-long trial, and by its end he possessed the complete record. All the daily transcripts were loaned to Mrs. Brenda Yates whose husband owned a photocopy service. Mrs. Yates copied the entire record, made it available to the public, distributed it and advertised to sell it. Kenneth Long states in his declaration of October 8, 1987, filed in the Miller case in England:

> "Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts." Exhibit K to March 15, 1990 declaration.

Mrs. Yates recalls that she sold, copied and delivered approximately twenty-five copies of the Armstrong trial transcript around that time. See declaration of Gerald Armstrong filed herewith.

Immediately following the trial Mrs. Yates also selected out of the record some one hundred fifty pages which she made into a pack and distributed. She recalls that she sold or gave away approximately one hundred copies of that pack of transcript pages.

The Armstrong trial decision, which is also often and generally called "the Breckenridge decision," and which plaintiffs seek to seal in the appellate record as pages 251-277 in Appellants' Appendix in Appeal No. B025920 and Exhibit C in Appellants' Appendix in Appeal No. B038975, has been a public document since June 20, 1984. It was affirmed by this Court on July 29, 1991.

The Breckenridge decision is forever a piece of international jurisprudence. It will continue to be used by litigants or governmental agencies as long as the undeniably litigious Scientology organization takes legal or factual positions contrary to Judge Breckenridge's findings. On the issue of unity of control, see, e.g. final adverse ruling dated July 8, 1988 issued by the Department of the Treasury to the Church of Spiritual Technology, filed herewith as Exhibit G. This ruling is now part of Church of Spiritual Technology v. US, No. 581-88T in the United States Claims Court. See item 945 at p. 70 of Plaintiffs' Exhibits to Complaint filed herewith as Exhibit H.

> "Witness testimony in the Armstrong case alleged that the project known as Mission Corporate Category Sort-Out (MCCS) had been undertaken by the Church of Scientology of California in 1980. The alleged purpose of the MCCS project was,

> according to the testimony of Laurel Sullivan, to devise a new organizational structure to conceal L. Ron Hubbard's continued control of the Church of Scientology." Final adverse ruling, p. 2.
>
> "Utilizing testimony any (sic) witnesses from the Armstrong case, the government successfully argued that Mr. Hubbard was a managing agent of the Church of Scientology of California as late as 1984. See the Founding Church [of Scientology of Washington, D.C., Inc.] v. Director, F.B.I., [et al 802 F. 2nd 1448 (1985), cert. den]." Final adverse ruling p. 4.

Plaintiffs themselves lament:

> "It is precisely the trial court's "findings" [ ] which other parties in other litigation continually have sought to invoke against the Church, either to support their own allegations or as collateral estoppel." Appellants' Opening Brief in Appeal No. B025920, n.31, p. 27.

The Breckenridge decision has been cited, discussed and quoted in countless newspaper articles and several books. See, e.g. Miller, Russell, Bare-Faced Messiah: The True Story of L. Ron Hubbard (1987) 370-372, filed herewith as Exhibit I; Corydon, Bent and Hubbard, L. Ron, Jr., L. Ron Hubbard: Messiah or Madman (1987), 238-248, filed herewith as Exhibit J; Atack, Jon, A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed (1990), 328-334, filed herewith as Exhibit K.

Although plaintiffs have moved to seal two copies of the Breckenridge decision in the appellate record, they have not moved to seal several other copies which have been filed in the same open record.9/ If plaintiffs intend

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9/See, e.g. Exhibit I to plaintiffs' Petition for Writ of Supersedeas filed December 19, 1988, Exhibit A to Real Party in Interest, Bent Corydon's Response to Petition for Writ of Supersedeas filed December 23, 1988, and

that only the two decision copies they have designated should be sealed and the other copies left unsealed and unaffected by the sealing, then they ask this Court to order a senseless act. If they intend that the authenticity and validity of not only the unsealed copies of the Breckenridge decision in the record on appeal but the perhaps thousands of copies of the Breckenridge decision world wide be rendered questionable, and the meaning of the decision and case be confused, they ask this Court to abet a conspiracy to obstruct justice.

When seeking to seal court records in which their antisocial nature and acts have been exposed, plaintiffs are fond of pronouncing that "[i]n the analogous area of trade secrets, it is routine for courts to seal judicial records." Motion at 9, Appellants' Opening Brief in Appeal No. B038975 n. 12 at 21. The application of the rationale of trade secrets law, however, reveals just how silly plaintiffs' effort to seal the record on appeal here is. Not only are there no trade secrets in the Breckenridge decision, or anywhere else in the appellate record, there are no non-trade secrets. The decision has been so widely distributed, is so publicly available and has been so universally used in legal and non-legal contexts that sealing it in the Armstrong appellate record would be, in the area of trade secrets, analagous to sealing in 1991 a Henry Ford patent for the internal combustion engine.

Plaintiffs also seek to have sealed pages 57 - 60 in Appellants' Appendix in Appeal No. B025920, TRO issued in the case below, August 24,

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Footnote 9 continued
Exhibit A to Defendant's Reply to Appellants' Opposition to Petition for Permission to File Response filed March 30, 1990, all in Appeal No. B038975; and Exhibit A to plaintiffs' Motion to Seal Record on Appeal now before this Court.

1982; pages 4-28 of Respondent's Brief in Appeal No. B025920; and Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975, respectively Bent Corydon's Opposition to Motion to Unseal File, November 2, 1988, Plaintiffs/ Intervenor's and Cross-Defendant's Motion for Clarification and/or Reconsideration to Preserve Seal on One Document Previously Held Excluded from Evidence and Held to Be Protected by Attorney-Client Privilege, and Five Additional Documents Previously Excluded from Evidence and Maintained Under Seal, November 15, 1988, and Opposition to Motion to Reconsider, November 23, 1988.

While plaintiffs claim that the August 24, 1982 TRO has been under seal since December 1986, they themselves have used it publicly after that time. Kenneth Long stated in his affidavit of October 7, 1987, filed in the Miller case:

> "On August 24, 1982, the Honorable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked as "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for the purposes of that action." Exhibit F to defendant's declaration of March 15, 1990, at p. 7.

The TRO was created by plaintiff organization, it has been a public document since 1982, and it contains no conceivably private or confidential materials. The only effect of sealing it now would be confusion.

Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975 have never been sealed. They comprise public documents, they were filed publicly, plaintiffs did not move to seal them in the trial court's record, and they have been public for almost three years. These materials, moreover, concern matters and documents which have been the subject of litigation between plaintiff organization and the United States Government from 1984 until the present. 10/

Respondent's Brief in Appeal No. B025920, in which plaintiffs seek to seal pages 4 to 28, has been part of the open record on appeal since January 1986. It is clear that this Court depended on these pages of the brief in its consideration of the facts and issues in the case. 11/ Plaintiffs do not ask that their briefs be sealed, even though they, like respondent's brief, cite to the trial transcript and documents admitted into evidence at trial. Sealing pages 4-28 of respondent's brief would have the effect, therefore, of leaving

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10/ See, e.g., regarding the MCCS tapes, U.S. v. Zolin, 809 F.2d 1411 (9th Cir. 1987), op. withdrawn, reh gr, en banc (9th Cir. 1987), 832 F. 2d 127, reh dismd, en banc, 842 F. 2d 1135 (9th Cir. 1988), am'd 850 F. 2d 610 (9th Cir. 1988), cert. gr. 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246, motion den. 489 U.S. 1005, 109 S.Ct. 1110, 103 L. Ed. 174 (1989) aff'd in part and vacated in part, 491 U.S. 994, 109 S. Ct. 2619, 105 L. Ed.469 (1989), on remand, 905 F. 2d 1344 (9th Cir. 1990), reh. den. en banc (unpublished order September 19, 1990); cert. denied, Church of Scientology v. U.S., ___U.S.___, 59 U.S.L.W. 3636 (March 18, 1991) Also see, regarding the "five documents," e.g., the "Order Allowing the United States of America to Examine and Copy Exhibits 5-K, 5-L, 5-O, 5-P and 6-O," filed in the Armstrong case August 27, 1991 and filed herewith as Exhibit L.

11/ See, e.g. documents shredding at Gilman Hotsprings, Resp. Bf. at 10,11; Armstrong Opinion at 919,920; defendant's November 1981 report regarding factual inaccuracies in Hubbard biographies, Resp. Bf. at 14,15; Armstrong Opinion at 920.

stand plaintiffs' statement of facts and thus confusing any reader of the record on appeal and allowing plaintiffs to restate and reinterpret the facts of the case. Although this would please plaintiffs it is unfair to defendant and the public.

Since all the materials plaintiffs want sealed are public records, sealing them would be an idle act. But even if it were found that any of the materials were not public and merited being considered private and confidential and therefore sealed, such a sealing would also be an idle act, since plaintiffs continue to attack defendant in present time concerning matters in the record on appeal, and he has a Constitutional right to defend himself, including by use of the "sealed materials."

It is well known maxim of jurisprudence that "the law neither does nor requires idle acts." California Civil Code § 3532, Stockton v. Stockton Plaza Corp. (1968) 261 Cal. App. 2d 639, 68 Cal. Rptr. 266. It is an idle act plaintiffs urge this Court to order.

IV

PLAINTIFFS HAVE SHOWN NO GROUNDS
FOR SEALING THE RECORD ON APPEAL

This Court prescribed in Armstrong what was necessary for its consideration of a motion to seal. "Should plaintiffs move to seal the record on appeal, we would require a much more particularized showing," than merely "that their pursuit of an action brought primarily for the purpose of protecting their respective privacy interests in the documents converted by Armstrong should not cause disclosure of the very information they sought to protect, through references in the record to such information." Id at 923. Yet plaintiffs' motion simply repeats that argument, and the portions they seek to seal do not come close to a "much more particularized showing."

Plaintiffs also argue, exactly as they did in their appeal from Judge Geernaert's order unsealing the Armstrong court file, that "Judge Breckenridge was aware in entering the sealing order, the privacy interest of appellants was exceptionally strong." Appellants' Brief in Appeal No. B038975 at 13, Motion at 10. But this Court stated in Armstrong: "We are unaware of any showing made before Judge Breckenridge, other than the parties stipulation, justifying sealing by the trial court of the record in this case." Id. at 921. Particularized showings were made during the trial document by document, at which time Judge Breckenridge made particularized rulings, admitting some documents into evidence, allowing portions of some documents to be read into the record, and upholding plaintiffs' privacy rights in some documents and maintaining them under seal.

Plaintiffs have also not followed the Court's guidelines for parties seeking to seal appellate records as laid down in Champion v. Superior Court, supra, 201 Cal. App. 3d 787, 247 Cal. Rptr. 624.

> A request to seal a document must be filed publicly and separately from the object of the request. It must be supported by a factual declaration or affidavit explaining the particular needs of the case. Where the contents of the to-be-sealed document become a focus of the argument for sealing, the request must refer the court to the to-be-sealed document, where the court may review its contents and any content-specific declarations and arguments about sealing it." Id. at 788.

Here, plaintiffs have appended to their motion as Exhibit A the Breckenridge decision, which is one of the documents they wish to have sealed. And they have not provided this Court with "content-specific declarations and

arguments about sealing" the portions of the record they have designated, but have provided only a non-specific declaration which but repeats the argument in the motion.

V

THE WAKEFIELD CASE DOES NOT SUPPORT SEALING THE RECORD IN ARMSTRONG

Contrary to plaintiffs' assertion that the case of Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip. Op. 4625 forwards their argument for sealing the record on appeal, it undermines it. Plaintiffs claim that "[i]n that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions." Motion at 14. In Armstrong it is plaintiff organization which has repeatedly violated the settlement agreement thereby forcing defendant to respond. Plaintiffs claim that defendant Scientology organization "brought contempt proceedings against Wakefield, and sought to have the proceedings in camera, in order to protect the very privacy rights placed at issue by Wakefield's conduct." Motion at 14. In Armstrong defendant seeks to have the court records kept unsealed and publicly available to protect himself from plaintiff organization's conduct. And where the district court was quoted in Wakefield as stating that "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective," in Armstrong it is plaintiff organization which has violated court sealing orders, and now nothing short of complete disclosure would be ineffective.

In this motion to seal the record on appeal plaintiffs aver that the non-disclosure conditions of the settlement agreement Wakefield had entered into with the Scientology organization were reciprocal, that what the organization sought to enjoin her from disclosing were "matters which Wakefield and the Church had agreed to keep confidential." Motion at 15. The 11th Circuit Court of Appeals apparently understood the non-disclosure conditions to be reciprocal when it stated that "[o]n September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions." Id. at 4626. In a Motion to Delay or Prevent the Taking of Certain Third Party Depositions dated November 1, 1989 and filed in the case of Corydon v. Church of Scientology International, Los Angeles Superior Court No. C694401, and filed in Appeal No. B038975 as Exhibit D to defendant's declaration of March 15, 1990, defendant Scientology organization stated:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, (emphasis in original) was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlement agreements themselves." 3-15-90 declaration, Ex. D. p. 4.

Yet in response to defendant's allegations in the March 15, 1990 declaration of violations of the settlement agreement by Scientology, organization attorney Lawrence Heller wrote in a declaration dated March 27, 1990 filed in the Corydon case in support of an Opposition to Motion for Order Directing

Non-Interference with Witnesses, and filed as Exhibit F to defendant's declaration of December 25, 1990 in Appeal No. B038975:

> "The confidentiality provisions of the Armstrong Settlement Agreement are nor (sic) in nature. Mr. Armstrong does have duties of confidentiality [ ] [h]owever, there are no reciprocal duties of confidentiality under the terms of the Armstrong Settlement Agreement that apply to any Church parties in the settlement."Defendant's Appendix, p89.

The Wakefield Court either did not have before it, or did not know that it had before it, such an anti-public policy punching bag agreement, so their opinion regarding violations of plaintiff Wakefield's settlement agreement is inapplicable here.

But the Wakefield opinion is applicable for its strong argument in favor of openness in our courts generally and in the Armstrong appellate record specifically, for parties such as plaintiffs herein will misstate and misuse secret agreements and secret proceedings just because they are secret.

VI

DEFENDANT'S INTEREST IN KEEPING THE RECORD ON APPEAL UNSEALED IS REAL

A sworn statement in a foreign court labeling defendant "an admitted agent provocateur of the U.S. Federal Government," 3-15-90 declaration Exhibit H, at 4, although easily viewed as hilarious, especially in light of what defendant really is, is, in this period of human history, something very calculated and sinister. The perverse use of an intelligence operation Scientology ran against defendant in 1984 in the organization's battle with the Criminal Investigation Division of the IRS in 1991 is heartbreaking. See,

Exhibit A at p. 14. The perjurious declarations of plaintiffs' attorneys are frightening. See, e.g. Exhibit E, defendant's declaration of September 3, 1991 in response to attacks by various lawyers; and defendant's declaration of December 25, 1990, filed in Appeal No. B038975 as Defendant's Appendix.

That defendant has been under attack from plaintiff organization since the December 1986 settlement is unquestionable. Since filing their motion to seal the record on appeal, plaintiffs have filed a motion in Los Angeles Superior Court to Enforce the Settlement Agreement, for Liquidated Damges of $100,000 and to Enjoin Future Violations. Defendant is filing this motion herewith as Exhibit M in a sealed envelope. It is his opinion, however, that the motion contains no part, document or evidence that is not a matter of public record, and he has no objection to this exhibit being unsealed by this Court.

It is clear to defendant that plaintiffs seek to destroy his credibility, his character and his person, and that one of their weapons is the sealing of his words and hiding the record of their actions against him. Safety for honest men lies in openness; safety for the dishonest lies in secrecy. As long as defendant's words are available to the public he enjoys some safety. When all his words have been sealed there remains no deterent to plaintiffs going a step further and sealing him.

This Court has a golden opportunity in this matter to send a message to plaintiffs to cause them to abandon their hope of enlisting the assistance of the judiciary to hide their past and confuse the truth, and to place their hope for a peaceful future in openness, not secrecy.

VII

THE PUBLIC'S INTEREST IN AN OPEN APPELLATE RECORD IN THE ARMSTRONG CASE IS OVERWHELMING

Quoting from Estate of Hearst, supra, this Court delineated the public policy regarding access to court records:

> "If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals. [ ] And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts. (In re Shortridge (1893) 99 Cal. 526, 530 [34 P. 227,228].) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...." Armstrong, supra, 283 Cal. Rptr. at 921, Estate of Hearst, supra, 67 Cal. App. 3d at 784, 136 Cal. Rptr. at 824.

The Armstrong case vividly demonstrates why secrecy in court files is distrusted. Taking advantage of the sealed trial court file and a secret gag agreement, plaintiff organization used matters from the court file, including sealed trial exhibits, in litigation against opponents who did not have access to the same sealed materials. They attacked defendant with his own documents while threatening him with lawsuits if he defended himself, and they perverted the meaning of matters within the sealed file. Once the file was sealed, plaintiffs fought with all their legal might litigants, such as Bent Corydon, who sought access to evidence which, in an open court file, would have been available with as little effort as filling out a file request slip and handing it to a court clerk.

Plaintiffs herein are public figures, as was L. Ron Hubbard, whom most of the documents which gave rise to the litigation and much of the evidence adduced at trial concerned. Plaintiff organization advertises broadly and forcefully, recruits actively, seeks publicity, is notorious and very wealthy. Its doctrine of "fair game" toward its perceived enemies has been recognized and denounced by several courts including this one. Plaintiffs' history, policies and actions are matters of great public interest, and public policy therefore requires that the record on appeal, which deals with these history, policies and actions be kept unsealed and complete.

Plaintiffs do not seek to seal the record on appeal to vindicate privacy rights. As Judge Breckenridge stated in his famous decision: "The Guardian's Office, which plaintiff (Mrs. Hubbard) headed, was no respector of anyone's civil rights, particularly that of privacy." Decision at p. 12. Although plaintiff organization has renamed the Guardian's Office's and changed its head it has not altered its nature. It is plaintiffs' hope to conceal the facts, confuse the issues, pervert the truth, and deny the public the information it needs and has a Constitutional right to for making rational choices.

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VIII

CONCLUSION

Plaintiffs have made no showing that would justify sealing the record on appeal, whereas plaintiffs' unclean hands, public policy, defendant's interests and the fact that all the to-be-sealed documents have been for years in the public domain overwhelmingly warrant keeping the record open.

Dated: October 14, 1991

Respectfully submitted,

Gerald Armstrong
In Pro Per

SERVICE LIST
(Opposition to Motion to Seal Record on Appeal)

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CLERK OF THE SUPERIOR COURT
County of Los Angeles
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PROOF OF SERVICE BY MAIL

I am a resident of the County of Marin, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 711 Sir Francis Drake Blvd, San Anselmo, California 94960.

On October 15, 1991 I caused to be served the within OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Anselmo, California, addressed to the persons and addresses specified on the service list attached.

Executed on October 15, 1991 at San Anselmo, California.

I declare that the foregoing is true and correct.

L. Phippeny

L. Phippeny

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff-Appellant, and MARY SUE HUBBARD, Intervenor-Appellant, v. GERALD ARMSTRONG, Defendant-Respondent	Case Nos. B025920 & B038975 L.A. Superior Ct. No.C420153 **EXHIBITS SUPPORTING OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL**

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960
(415)456-8450

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am the defendant in the case of Church of Scientology and Mary Sue Hubbard vs. Gerald Armstrong, Los Angeles Superior Case No. C420153. I am familiar with the records in this case and related cases or publications.

2. Attached hereto are true and correct copies of the following documents:

Exhibit A — Complaint filed August 12, 1991 in the case of Church of Scientology International vs. C. Phillip Xanthos and 16 Other Agents, No. 91-4302 SVW, in U.S. District Court in the Central District of California.

Exhibit B — Further Response to Order of July 2, 1985; Request for Stay dated January 22, 1986, and filed in Armstrong..

Exhibit C — Supplemental Memorandum in Support of Defendants's Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie J Bartilson, filed August 26, 1991 in the case of Vicki and Richard Aznaran vs. Church of Scientology of California, et al..No. CV 88-1786 JMI in U.S. District Court for the Central District of California.

Exhibit D — Reply in Support of Defendants' Motion for Summary Judgment Based on the Statute of Limitations, filed August 26, 1991 in Aznaran.

Exhibit E — Declaration of Gerald Armstrong Regarding Alleged 'Taint" of Joseph A Yanny, Esquire, filed September 4, 1991 in Aznaran.

Exhibit F — Defendants' Opposition to Ex Parte Application to File Plaintiffs' Opposition to Defendant's Motion to Dismiss Complaint with

Prejudice; Declaration of Laurie J. Bartilson, filed August 30, 1991 in Aznaran.

Exhibit G — Final Adverse Ruling dated July 8, 1988 from the Internal Revenue Service to the Church of Spiritual Technology.

Ehibit H — Page 70 of Plaintiff's Exhibits to Complaint filed October 6, 1988 in the case of Church of Spiritual Technology vs. United States of America, No. 581-88T in the U.S. Claims Court.

Exhibit I — Pages 370 - 372 from Miller, Russell, Bare-Faced Messiah: The True Story of L. Ron Hubbard.

Exhibit J — Pages 238 - 249 from Corydon, Bent and Hubbard, L. Ron, Jr., L. Ron Hubbard: Messiah or Madman?

Exhibit K — Pages 328 - 334 from Atack, Jon, A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed.

Exhibit L — Order Allowing the United States of America to Examine and Copy Exhibits 5-K, 5-L, 5-O, 5-P and 6.0 dated August 27, 1991 and filed in Armstrong.

Exhibit M — (In a sealed envelope) Notice of Motion and Motion to Enforce Settlement Agreement; for Liquidated Damages and to Enjoin Future Violations filed October 3, 1991 in Armstrong.

3. During the 1984 Los Angeles Superior Court trial in Armstrong I became acquainted with Mrs. Brenda Yates who attended many of the daily proceedings. Mrs. Yates, whose husband owned a copy service in Los Angeles at that time, offered to make copies of the reporters' transcripts of proceedings, which were being obtained daily by my attorney, Michael J. Flynn. By the end of the trial I learned that Mrs. Yates possessed a complete set of the trial transcripts. At the end of the trial I also provided Mrs. Yates for copying a complete set of the trial exhibits which I had in my possession.

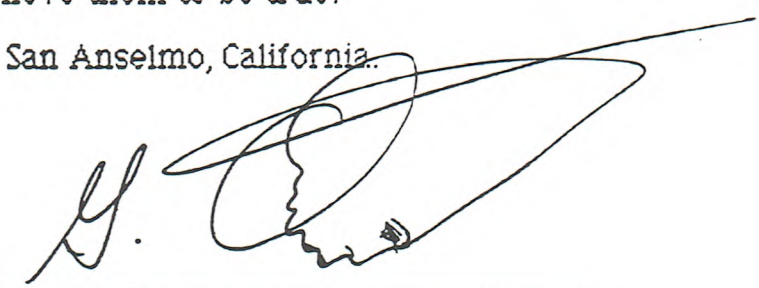
This did not include any exhibits from the sealed documents which had been the subject of the trial, as these were segregated and sequestered by Judge Paul G. Breckenridge, Jr., who presided at the trial, and not copied by my attorneys or made available to the public.

4. Since the trial I have communicated with Mrs. Yates from time time right up to a few days ago when I talked with her regarding her distribution of the trial transcripts, Judge Breckenridge's June 20, 1984 Memorandum of Intended Decision and the trial exhibits. Mrs. Yates recalls that she sold and distributed approximately twenty-five copies of the complete trial transcript within the year following the trial. She recalls distributing about eight copies of the trial exhibits. She does not recall how many copies of the Breckenridge decision she distributed but felt that it was all over the world.

5. Mrs. Yates also said that she selected out of the complete transcript various parts of the trial testimony totalling about one hundred fifty pages, which she formed into a pack which she also copied, sold and distributed. She recalls that she distributed approximately one hundred of this pack.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on October 16, 1991, at San Anselmo, California.



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1030

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHURCH OF SCIENTOLOGY INTERNATIONAL, Plaintiff, vs. C. PHILLIP XANTHOS; ALAN LIPKIN; MARCUS OWENS; MARVIN FRIEDLANDER; S. ALLEN WINBORNE; ROBERT BRAUER; JOSEPH TEDESCO; CHARLES RUMPH; RAYMOND JUCKSCH; MELVYN YOUNG; CARL CORSI; GREGORY ROTH; WILLIAM CONNETT; KEITH ALAN KUHN; CHARLES JEGLIKOWSKI; MELVIN BLOUGH; RODERICK DARLING; and DOES 1 - 200, Defendants.	91 4301 SVW(Tx) No. COMPLAINT FOR DAMAGES FOR AND INJUNCTIVE RELIEF FROM: 1. FOURTH AMENDMENT VIOLATIONS; 2. FIRST AMENDMENT VIOLATIONS; 3. DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT; AND 4. EQUAL PROTECTION VIOLATIONS UNDER THE FIFTH AMENDMENT. JURY TRIAL DEMANDED

(1)

JURISDICTION AND VENUE

1. As this action seeks damages for violations of the United States Constitution brought under the authority of Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that jurisdiction is not founded solely on diversity of citizenship and the claims arose in this judicial district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) in that this is a civil action in which all the defendants are or were employees of a United States agency, some of whom are residents of this judicial district, which is the judicial district in which plaintiff resides and in which the causes of action set forth arose.

PARTIES

3. Plaintiff Church of Scientology International ("the Church") is a not for profit religious corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. In accordance with the ecclesiastical policies of the Scientology religion, plaintiff is the Mother Church of the Scientology religion, an internationally recognized religion engaged solely in spiritual, charitable, humanitarian and community-oriented endeavors intended to enhance adherents' spiritual knowledge of themselves and their Creator. The Scientology religion has more than 8 million members and Scientology Churches, Missions and groups exist in 90 nations around the world.

4. Except for three who have retired from government service since performing the acts hereinafter averred, the defendants are, and at all relevant times were, employees of the Internal Revenue Service ("IRS"). The matters averred in this Complaint are largely drawn from information only recently discovered by the Church in the course of Freedom of Information Act ("FOIA") litigation.

5. As the conduct which gives rise to the Church's claims of constitutional violations occurred within different divisions and offices of the IRS, the defendants are grouped within their respective divisions for the purposes of the following identifying averments:

A. Los Angeles Criminal Investigation Division.

i. Defendant Philip Xanthos ("Xanthos") is, and at all relevant times was, a Branch Chief of the Los Angeles Criminal Investigation Division of the IRS ("LA CID"). Upon information and belief, Xanthos resides in this judicial district.

ii. Defendant Alan Lipkin ("Lipkin") is, and at all relevant times was, a Group Manager within LA CID. Upon information and belief, Lipkin resides in this judicial district.

B. National Office Exempt Organizations.

i. Defendant Marcus Owens ("Owens") is currently the Director of the IRS National Office Exempt Organizations ("EO") Technical Division, and was, at all relevant times an official of the EO Technical Division. Upon

information and belief, Owens resides in the State of Maryland.

ii. Defendant Marvin Friedlander ("Friedlander") is, and at all relevant times was, an IRS Senior Conferee Reviewer in the EO Technical Division. Upon information and belief, Friedlander resides in the State of Maryland.

iii. Defendant S. Allen Winborne ("Winborne") was at all relevant times until approximately 1987 IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Upon information and belief, Winborne resides in the State of Maryland.

iv. Defendant Robert Brauer ("Brauer") was at all relevant times from approximately 1987 to and including approximately December, 1990, IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Since in or about January, 1991, Brauer has been the IRS District Director in Pittsburgh, Pennsylvania. Upon information and belief, Brauer resides in the Commonwealth of Pennsylvania.

v. Defendant Joseph Tedesco ("Tedesco") was at all relevant times until approximately 1987, Chief of the National Office Exempt Organizations Technical Division. Since in or about 1987, Tedesco has been in retirement. Upon information and belief, Tedesco resides in the Commonwealth of Virginia.

vi. Defendant Charles Rumph ("Rumph") was at all relevant times until approximately 1986, an attorney in the Tax Litigation Division, Office of Chief Counsel at the National Office. Although he did not work in EO, plaintiff is informed and believes that Rumph worked in conjunction with the other EO defendants in doing the acts hereinafter averred. Since in or about 1986, Rumph has been in retirement. Upon information and belief, Rumph resides in the District of Columbia.

vii. Defendant Roderick Darling ("Darling") is, and at all relevant times was, an IRS tax law specialist in the EO Technical Division. Upon information and belief, Darling resides in the State of Maryland.

C. Los Angeles Exempt Organizations Division.

i. Defendant Raymond Jucksch ("Jucksch") is, and at all relevant times was, a Group Manager within the Los Angeles Exempt Organizations Division of the IRS ("LA EO"). Upon information and belief, Jucksch resides in this judicial district.

ii. Defendant Melvyn Young ("Young") is, and at all relevant times was, a Revenue Agent within LA EO. Upon information and belief, Young resides in this judicial district.

iii. Defendant Carl Corsi ("Corsi") was at all relevant times to and including

July, 1989, a Revenue Agent within LA EO. Since in or about July, 1989, Corsi has been in retirement. Upon information and belief, Corsi resides in this judicial district.

D. Los Angeles District Counsel Office.

i. Defendant Charles Jeglikowski ("Jeglikowski") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Jeglikowski resides in this judicial district.

ii. Defendant Gregory Roth ("Roth") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Roth resides in this judicial district.

E. Los Angeles District Office.

i. Defendant William Connett ("Connett") was at all relevant times to and including January, 1986, District Director of the Los Angeles District Office of the IRS. Since in or about 1987, Connett has been the IRS Representative in Paris, France, where, on information and belief, he now resides.

F. IRS National Office Internal Security Division.

i. Defendant Keith Alan Kuhn ("Kuhn") is, and at all relevant times was, Chief of the

Investigations Branch of the Internal Security Division of the Office of the Chief Inspector of the IRS. Upon information and belief, Kuhn resides either in the State of Maryland or the Commonwealth of Virginia.

G. St. Petersburg, Florida Exempt Organizations Division.

i. Defendant Melvin Blough ("Blough") is, and at all relevant times was, a Revenue Agent within the Exempt Organizations Division of the St. Petersburg, Florida office of the IRS. Upon information and belief, Blough resides in the state of Florida.

6. Upon information and belief, IRS employees other than those named as defendants in this action performed acts which are unlawful and unconstitutional in connection with the facts set forth in this complaint. The Church will seek leave of Court to amend this complaint when the IRS employees not named as defendants, but whose conduct warrants their inclusion as defendants in this action, are identified.

NATURE OF PLAINTIFF'S CLAIMS

7. By this action, the Church seeks damages for violations of its First, Fourth, and Fifth Amendment rights arising from the conduct of the defendants and others within the Internal Revenue Service. While this action focuses on recent events, it is the culmination of three decades of IRS coercion in violation of the Free Exercise Clause of the First Amendment, discriminatory treatment in violation of the

Establishment Clause of the First Amendment and the Equal Protection component of Due Process under the Fifth Amendment, as well as the denial of procedural Due Process rights in violation of the Fifth Amendment, and actions in violation of the Church's Fourth Amendment rights.

8. Although the IRS has withheld the vast majority of documents requested by Churches of Scientology under the FOIA, the limited FOIA information recently discovered by the Church through the production of documents and testimony demonstrates the actionable conduct hereinafter averred. This action, moreover, does not arise in a vacuum. It is an outgrowth of IRS conduct that includes:

a. Efforts by the IRS' Chief Counsel's office to persuade at least one municipal authority to find "local statutes and ordinances available as tools to curtail or close down" Scientology Churches;

b. Employment of "plants" to infiltrate Scientology Churches to obtain copies of Church records;

c. Recommendations of the IRS Chief Counsel that "defining church in regulations is one method to attack Scientology," which recommendation was followed by the formulation of such a definition in General Counsel Memorandum 36078 entitled "Church of Scientology" (later promulgated as Revenue Ruling 76-415);

d. Targeting the Church of Scientology as

"subversive," and conducting non-tax-related surveillance and intelligence gathering that a United States Senate Subcommittee would later find was "used to stigmatize, to set a group of individuals and organizations apart as somehow inherently suspect . . ." and which a Senate Select Committee found to be "an effort to employ tax weapons for essentially nontax purposes";

e. IRS documents which refer to the Scientology religion as "religious bunco" and a "grab-bag of philosophical voodooism," as well as IRS tape recordings of witness interviews in which defendants Young, Corsi and Roth referred to Scientologists as "crazy devotees," characterized Scientology's religious services as a "dog and pony show," compared adherence to the Scientology faith to drug addiction, and called the religion itself a "facade"; and

f. Encouragement given by Corsi, Young and Roth to individuals pursuing civil cases involving claims for damages against plaintiff and other Scientology Churches.

9. The claims for relief asserted in this action arise from the demise of a two-year criminal investigation of plaintiff, other Scientology Churches, and individual Scientologists that produced no indictments, no charges, and nothing more than the refusal of the Department of Justice to take any action with regard to that lengthy investigation. In the aftermath of that investigatory debacle, defendants, as is

more fully averred later in this complaint, embarked upon a course of conduct which has included:

a. EO employees demanding documents from plaintiff and other Scientology Churches ostensibly to evaluate applications for exemption under 26 U.S.C. § 501(c)(3), while in reality making such demands so that those documents could be turned over to IRS criminal investigators in violation of the Fourth Amendment;

b. Inauguration of nationally and locally coordinated campaigns to single out plaintiff and other Churches of Scientology as targets for tax inquiries because they were Churches of Scientology, and to use such inquiries as a means to generate otherwise unavailable tax liabilities such as under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act in violation of the Establishment and Free Exercise Clauses of the First Amendment and the Equal Protection component of the Due Process Clause of the Fifth Amendment; and

c. Embarking on a nationally and locally coordinated campaign of collections activity which arbitrarily and capriciously freezes and attempts to freeze bank accounts of plaintiff and other Scientology Churches for alleged tax obligation of still other Scientology Churches without notice and without any

opportunity to be heard before seizing plaintiff's property in violation of the Due Process Clause of the Fifth Amendment.

FIRST CLAIM FOR RELIEF

(For First, Fourth and Fifth Amendment Violations by Defendants Xanthos, Lipkin, Owens, Friedlander, Darling, Winborne, Tedesco, Rumph, Jucksch)

10. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 9, inclusive.

11. The Scientology religion has been in existence for nearly four decades. From its earliest days, it has been a target of IRS scrutiny and hostility. After years of controversy and litigation, the IRS agreed with various Churches of Scientology to conduct an examination of a representative church and issue an exemption ruling based upon that examination for the representative church and all others similarly situated.

12. The IRS, for 25 consecutive days in March and April 1975, conducted an exhaustive examination of the Church of Scientology of Hawaii ("the Hawaii Church"), addressing every aspect of that church's operations, including Scientology beliefs and practices. As a result of that examination, Church of Scientology of Hawaii and twelve other Scientology churches were granted exemptions under 26 U.S.C. § 501(c)(3).

13. The grant of exemption to the Hawaii Church followed an unsuccessful attempt by the IRS to employ a litigation tactic appropriately described as "harass and moot" to avoid judicial adjudication of the exemption issue. When the Hawaii Church

filed suit contesting the IRS' 1969 denial of exemption, the IRS tendered a refund of the taxes to avoid an unfavorable court decision. When the Church refused the refund and pressed for a judicial determination, the IRS moved to dismiss claiming that the issue had been rendered moot. After the Ninth Circuit rejected this litigation ploy, the IRS settled the case and later granted exemption. The IRS, however, continued to resist applications for exemption by Scientology churches despite the fact that its only thorough, comprehensive examination of any church had resulted, begrudgingly, in more than a dozen exemptions.

14. Exemption applications for plaintiff Church of Scientology International, Church of Spiritual Technology and Religion Technology Center were filed with the Internal Revenue Service in 1983. These exemption applications were forwarded to the IRS National Office by the local offices where they were filed. Responsibility for the exemption applications resided with defendants Owens, Friedlander, and Tedesco of the National Office EO working in conjunction with defendant Rumph of the Office of the Chief Counsel. EO requested additional information of the filing entities. Discussions between Church counsel and the IRS personnel processing the applications began with regard to the IRS' requests for additional information, and at the request of those defendants the applicants provided further information to the IRS based on the belief that the newly formed churches all qualified for exemption and that the IRS was acting in good faith in the negotiations. EO letter requests to plaintiff and the other applicants dated July 30

and October 5, 1984 and January 18 and April 22, 1985 requested the applicants comment on specific allegations made by LA CID informants that were at the heart of the ongoing CID investigation. FOIA records and discovery in FOIA litigation reveal a continuous flow of information from EO to LA CID.

15. It is now clear, however, that defendants and the IRS were not dealing in good faith, but rather, were merely asking for and receiving voluminous financial and other records from plaintiff and the other churches without any intention of ever granting any section 501(c)(3) exemptions and as an unlawful means of obtaining data for LA CID. The use of the exemption process to obtain information for a criminal investigation deprived plaintiff of its rights guaranteed by the First, Fourth and Fifth Amendments to the United States Constitution, and violated specific IRS rules designed to protect those rights. The Internal Revenue Manual contains specific provisions which require EO to "immediately suspend" an inquiry if EO learns that "an assigned case involves a taxpayer who is the subject of a criminal investigation." The EO agents responsible for plaintiff's exemption application did not suspend the civil proceeding, but instead continued to use it as a means for gathering information for CID.

16. Between 1984 and 1986, LA CID conducted an extensive criminal investigation of plaintiff, other Scientology churches, and individual Scientologists, under the auspices of defendant Connett, the then-District Director, defendant Xanthos, the LA CID Branch Chief and defendant Lipkin, the assigned LA CID Group Manager. That investigation included the

use of mail covers, paid informants, summonses to dozens of financial institutions and church members, and infiltration of Scientology's ecclesiastical hierarchy. The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all Church documents to the IRS for their investigation. The CID further coordinated this plan with the Ontario Provincial Police in Canada, through direct contacts and exchange of information, hoping that through simultaneous assaults the "momentum of . . . charges will cause [Scientology] to collapse." Thus, the documents being channelled from EO to CID were being used for the unlawful purpose of forwarding criminal investigations in both the United States and in Canada.

17. That criminal investigation, the results of which were ultimately rejected in full by the Department of Justice, was doomed from its inception because it was based upon a faulty premise -- that plaintiff and the other Churches were engaging in criminal conduct (conspiracy to interfere with the collection of taxes) by the mere fact that they had applied for section 501(c)(3) exemptions. In other words, at the time that EO was allegedly processing the exemption applications, the IRS had already made a determination that the exemption applications were criminal instruments because the applying churches had already been prejudged as non-exempt.

18. The IRS personnel charged with responsibility for the exemption applications -- defendant Friedlander, and his superiors Owens, Tedesco and Winborne -- were fully aware of the ongoing criminal investigation, yet despite the fact that the Fourth and Fifth Amendment and IRS written procedures mandate that all civil IRS proceedings concerning a given tax period be suspended during the time in which a criminal investigation of that same period is in progress, EO personnel continued to request and receive information and documents from plaintiff and the other Churches and delivered such information and documents to defendants Xanthos, Lipkin and the other LA CID personnel conducting the criminal investigation.

19. In late July 1984, the Church learned through the media that LA CID had initiated a criminal investigation relating to Scientology organizations and individuals. Leaks to the media regarding the CID investigation had already resulted in unfavorable and harmful media reports, prior to the time when the organizations and individuals became aware that they were under investigation. In response to one such article, Church counsel contacted defendant Connett who confirmed that an investigation of Scientology's founder, L. Ron Hubbard, and another Scientologist was in progress, but who expressly misrepresented to counsel that the criminal investigation was separate and distinct from the ongoing exemption application process, and encouraged the Church to continue the application process. Connett, with the assent of defendants Friedlander and Winborne, told the Church's attorneys that the CID investigation did not directly involve

any of the applicants and might not lead to charges being filed. He stated that in that case, it would not make sense to drop the existing team which was developing the exemption applications. The truth of the matter was that defendants Friedlander and Tedesco were turning material over to LA CID, either directly, through Connett, or through the Los Angeles Exempt Organizations Division (which was staffed by defendants Jucksch, Corsi, and Young).

20. Connett did not merely misrepresent the status of the CID investigation to the Church. He also set into motion the coordination between the National Office employees processing the exemption applications, and the agents of the CID. In January 1985, Friedlander contacted Xanthos and his superior, CID Chief Ronald Saranow, at the suggestion of defendant Connett for the purpose of obtaining information from CID's files. Friedlander informed defendant Tedesco of his plan to travel to Los Angeles along with defendant Rumph, for the purpose of reviewing CID's materials as well as CID's "draft prosecution letter." In order to prevent plaintiff and the other churches from learning of the CID investigation, Friedlander proposed that EO and CID could mutually coordinate when or if any CID material would be included in any applicant's administrative file to preclude premature disclosure. Tedesco approved of the trip, as did defendant Winborne, who stated they should leave when ready.

21. In approximately February 1985, during the course of EO's information gathering on behalf of LA CID, defendants Friedlander and Rumph traveled to Los Angeles and met with

defendant Lipkin to acquire information about the criminal investigation and to learn of the criminal investigators' areas of interest so that EO and LA CID might work together more efficiently. At that time, Friedlander was provided with a draft copy of a "Special Agent's Report" ("SAR") prepared by the LA CID defendants, Xanthos and Lipkin, requesting prosecution of various Scientology Churches, entities, members and their counsel, and setting forth the theories of prosecution. Friedlander thereafter sought information from plaintiff and the other applicants relating to areas addressed in the draft SAR, representing that the information was necessary for EO's evaluations of the pending exemption applications. The information requested by Friedlander was supplied to EO, and thereafter forwarded by EO to LA CID to assist in the criminal investigation. Friedlander kept defendants Owens, Tedesco and Winborne informed regarding the provision of information by EO to LA CID. Moreover, Friedlander, knowing that he should have suspended the EO examination in light of the pending CID investigation, consulted agents of LA CID as well as Tedesco, Winborne and others concerning the requirement of suspending the EO proceeding. Friedlander was specifically directed to continue the exemption process, and he did so.

22. Following Friedlander's return from viewing CID's files in Los Angeles, EO employee Roderick Darling communicated with Friedlander regarding the use of the CID materials. Darling suggested that EO could pose questions to the Church based on certain documents in CID's files, since it would not involve reliance on any testimony solicited by CID and,

therefore, would not expose the IRS to the charge that the IRS EO function had allied itself with CID or was tainted by CID's conspiracy theories. Darling also informed Friedlander that CID hoped that EO would somehow be able to extract information from the Church, and that EO would be able to turn up something which CID had not been able to. In March 1985, defendants Lipkin and Connett attended a meeting at the National Office to discuss the pending exemption applications with defendants Friedlander, Winborne, Rumph and Tedesco. They discussed the possible timing of denials of exemption to coincide with the CID's prosecution. Connett also assured the EO defendants that CID would provide them with the Special Agent's Report when it was completed.

23. Numerous instances of the provision of information from defendants responsible for EO functions to defendants responsible for LA CID functions are presently known to plaintiff through FOIA requests, FOIA litigation and discovery in such actions, and numerous other instances of such unlawful acts are believed to exist but have not yet been discovered by plaintiff. The IRS has even attempted to thwart such Freedom of Information Act discoveries by improperly withholding documents and portions thereof concerning the unlawful collusion between EO and CID which should have been released. The IRS has improperly asserted that records revealing the collusion were not discloseable based on the IRS' "deliberative process privilege," and thereby seeking to keep its unlawful acts from coming to view.

24. To prevent the revelation of the unlawful and

unconstitutional collusion between EO and LA CID, Friedlander destroyed copies of memoranda and notes taken during his visits to LA CID, and on information and belief, notes of subsequent telephone communications with Lipkin and others. Friedlander also destroyed documents he requested from LA CID because he did not want to place them in the application files and thereby be required to supply them to the applicant churches. Darling also supplied documents obtained during EO's examination to LA CID for its use in its criminal investigation and received a copy of the draft SAR.

25. The initial conduit for transmitting information and documents from the Church through the EO in Washington, D.C. (defendants Owens, Tedesco, Rumph, Darling and Friedlander) to LA CID (defendants Xanthos and Lipkin, under the supervision of defendant Connett) was the Los Angeles Exempt Organizations Division (defendants Jucksch, Corsi and Young). At some time during the concurrent EO examination and LA CID criminal investigation, defendant Connett agreed to assume personal responsibility for transmitting the material from EO to LA CID.

26. Plaintiff and the other applicant Churches were unaware that EO and LA CID were colluding with one another behind the scenes, and continued to cooperate with EO personnel in conducting the examinations which the IRS represented were being conducted in good faith. Any potential suspicions by plaintiff or the other Churches that the information gathering may not have been completely for civil purposes, were allayed by the receipt of a letter to CST dated July 26, 1985, written by Friedlander and Darling, in which they stated: "We assure you

that our questions (in previous correspondence) have heretofore been solely directed at developing the applications to the point where your purpose and activities have been sufficiently described in accordance with the standards for issuing rulings ...." These representations were fraudulent, as the SAR, written 2 months earlier, unequivocally called for denial of tax exemption.

27. Notwithstanding that representation, EO continued to gather information for use by LA CID. A copy of the SAR obtained in FOIA litigation makes it clear that the purpose of the defendants who participated in the EO - LA CID collusion was for defendants to combine their efforts to create "another round of denial of exempt status," a circumstance which the SAR states was intended to cause "a final halt to" and "the ultimate disintegration of" the Scientology religion.

28. In September of 1985, plaintiff and the other applicants learned that LA CID had forwarded a recommendation for criminal prosecution to the IRS LA District Counsel's office, and that at least RTC and CST were named as targets of the investigation. On information and belief, plaintiff was also a target of the criminal investigation. By December 1985, the District Counsel's office had concluded that the SAR did not warrant immediate prosecution and forwarded the matter to the Justice Department with a request that an investigative grand jury be convened.

29. The request for a grand jury coincided with the January 7, 1986 issuance of letters by the IRS National Office proposing the denial of exempt status to plaintiff, RTC and

CST. Defendant Friedlander made the decision to issue those letters at that time. At the same time, January of 1986, defendants Jucksch, Corsi and Young, on behalf of the IRS' LA Exempt Organizations Division, prepared to launch a third prong of attack (to coincide with the grand jury request and the proposed exempt status denials) in the form of examinations conducted by LA EO. Those examinations were an outgrowth of the stalled LA CID investigation, and LA EO defendant Corsi had held a series of meetings during the course of the criminal investigation with LA CID defendant Xanthos.

30. The three prongs of attack which defendants had coordinated to begin in January 1986 were all delayed, first, because the Justice Department did not convene a grand jury and, second, because plaintiff, RTC and CST submitted an approximately 500-page protest of the proposed exemption denials.

31. By October 1986, LA CID's criminal investigation of the various Scientology Churches and individuals was moribund, and since the Justice Department had refused to pursue the matter before a grand jury, the case was about to be officially closed. By that time, the protests to the proposed denial of exempt status had bogged down the efforts of the EO defendants. In October 1986, with the investigation about to close, agents of LA CID attempted to utilize the news media to revive the investigation. The October 1986 issue of "Forbes" magazine contained an article by writer Richard Behar which falsely stated that the CID investigation was "gathering momentum." On information and belief, these and other

allegations which appeared in the Forbes article were "leaked" to Behar by defendants Lipkin with the knowledge and consent of defendant Xanthos to encourage the Department of Justice to more seriously consider the allegations set forth in the Special Agents Report. Indeed, Behar openly applauded the SAR's stated goal - the "ultimate disintegration" of the Church - in a recent Time magazine article. Defendant Owens, in turn, was quoted by Behar in the recent article, stating that there have been thousands of IRS agents involved in Church related tax matters for years. The IRS also apparently provided Behar with information concerning the Church's FOIA cases, as Behar was able to report on the number of such matters filed. Thus, the IRS' pattern of utilizing media to flank its actions against the Church continues to the present.

32. In November 1986, the Department of Justice rejected the request made by LA CID through LA District Counsel to convene a grand jury to continue the criminal investigation. The LA CID defendants, however, remained undaunted, and further sought to exploit their collusive connection to the EO and the LA EO defendants. In that regard:

a. On or before December 16, 1986, defendant Lipkin of LA CID met with defendant Corsi of LA EO to arrange for a meeting between Lipkin and Corsi's Group Manager, defendant Jucksch. At that December meeting, Lipkin discussed the LA CID files on the Church with Corsi and explained that defendant Friedlander of National Office EO had reviewed those files;

b. Defendants Lipkin, Corsi, and Jucksch met on January 5, 1987 to coordinate further actions with respect to plaintiff and other Scientology Churches;

c. In conjunction with National Office EO, LA CID and LA EO planned, coordinated, and implemented a plan to audit fourteen Churches of Scientology and two related trusts, all already exempt; and

d. LA District employees were invited to the National Office to review the data submitted by plaintiff, CST and RTC during the exemption application process.

Plaintiff and the other applicants, unaware of the ongoing collusion among the EO, LA EO, and LA CID defendants, continued to negotiate with EO to attain rulings of exempt status under 26 U.S.C. § 501(c)(3). Those negotiations continued throughout 1987.

33. As a result of the conduct of the defendants, and each of them, plaintiff has been coerced into diverting resources and attention away from the pursuit of its religious beliefs in order to defend itself against defendants' actions. Plaintiff also has been burdened in the free exercise of its religious beliefs by the intrusion of defendants into its records practices, beliefs and ecclesiastical structure and policies by the defendants as is hereinabove averred. Such coercion and burden each constitutes a violation of the Free Exercise Clause of the First Amendment to the United States

Constitution.

34. The collusion between the EO defendants, the LA EO defendants, and the LA CID defendants by which plaintiff was misled to believe that documents sought by defendants were for the purpose of a good faith exemption examination (rather than a sham exemption examination) when in fact such documents were being funnelled directly to criminal investigators, constitutes a violation of the Fourth Amendment to the United States Constitution.

35. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

36. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

37. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

SECOND CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

38. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 35, inclusive.

39. On or about December 4, 1987, defendant Friedlander informed Church representatives that the IRS insisted upon a "limited" review of the financial records of plaintiff RTC, and CST for 1986, to be conducted by the Los Angeles District Office, for the purpose of verifying the integrity of their records and to rule out the existence of any private inurement, the only remaining potentially disqualifying factor. In early 1988, defendants Friedlander and Brauer assured plaintiff of favorable exemption determinations as long as the limited review did not uncover inurement or an inadequate accounting system.

40. Those representations were false. Documents released by the IRS in later FOIA litigation included drafts of final denial letters for plaintiff, RTC and CST written by Friedlander and Darling in January of 1988, at the very time when defendants Brauer and Friedlander were representing to Church counsel that exemption was imminent. In fact, the representations were no more than a ploy to entice plaintiff and the other Scientology Churches to continue turning over detailed information to the IRS in violation of the Church's civil and constitutional rights.

41. On March 17, 1988, the National Office provided plaintiff, RTC and CST with new letters of assurance stating that the IRS was prepared to conduct a review so that "we may

complete favorable consideration" of the exemption applications. The letters further stated that the purpose of the review was to "determine the integrity of your financial and accounting systems" and "verify that no part of your net earnings inures to the benefit of any private shareholder or individual and that there is no other disqualifying activity." Each Church executed its letter of assurance, permitting the extremely unusual process of an on-site document review of plaintiff's records to proceed.

42. Extensive, on-site reviews began, starting with CST, in March of 1988. Despite the initial statement by Friedlander that the review would be limited, the Los Angeles office initially assigned four full-time agents to the review, and after eight weeks, another four full-time agents were added. This staffing represented 48 personnel weeks or roughly one year of IRS time. Friedlander and his superior, defendant Owens, testified that these examinations were the "most sweeping" examinations these officials had witnessed, "far exceeding" any they had previously experienced, and that the volume of information provided was "truly record-breaking."

43. The examination of CST was completed on June 2, 1988. At that time, the IRS Branch Chief responsible for the review stated that the agents had found nothing to show inurement and affirmed that, as to CST, "we have no concerns at this time." These statements confirm the findings of a memorandum written by defendant Friedlander in November 1987 which stated that private benefit ceased to be an issue following the death of L. Ron Hubbard in January 1986. Following the completion of the

examination fo CST, the IRS Los Angeles office began its review of RTC, which was completed in June 1988 -- again with no concerns raised by the agents.

44. On June 22, 1988, the Church discovered that in May 1988, defendants Corsi, Young and Roth secretly interviewed two disaffected Scientologists, Richard and Vicki Aznaran, who were suing CSI and other Scientology churches. Prior to leaving the Scientology faith in 1987, Vicki Aznaran had served as one of RTC's officers. These defendants had engaged in deceitful conduct designed to prevent the Churches from discovering that the IRS investigation was actually proceeding on two tracks: one known to the Churches, which was based ostensibly on good faith cooperation between the churches and the IRS, and the other which was covert and designed to undermine the progress the Churches believed had been made towards the granting of exempt status. The discovery of this conduct raised serious concerns about whether the IRS was proceeding in good faith and in accordance with the March 17, 1988 agreement. The Churches immediately sought a meeting with the IRS to discuss their concerns.

45. It was later revealed that defendant Lipkin of the CID was instrumental in arranging the interview of the Aznarans by the EO agents, thus demonstrating the continuing ties between EO and CID. Plaintiff, RTC and CST were also not aware at the time that the two senior LA EO agents in the examination, defendants Young and Corsi, had met several times with LA CID during the review, that defendant Lipkin had briefed all of the agents involved in conducting the review,

and that defendants Corsi and Young had by this time received and reviewed the Special Agent's Report. Thus, CID collusion with LA EO did not end in 1985 when IRS District Counsel rejected CID's request for prosecution, nor in 1986 when the Justice Department refused to convene a grand jury.

46. During their interview of the Aznarans, defendants Corsi, Young and Roth openly displayed their animus toward the Church and the Scientology religion. The agents referred to Church religious services as a "dog and pony show", and referred to members of the Church as "crazy devotees". Defendant Young actually encouraged the Aznarans to "take a stand" against the Church. Defendant Roth compared the Scientology religion to drug addiction. These actions violate Internal Revenue Service policies which require an employee to maintain "strict impartiality" between the taxpayer and the government. These agents, who openly denigrated the Scientology religion, should have been removed from any examinations of Scientology churches under The Internal Revenue Manual, Handbook of the Rules of Conduct which indicates that an agent should be removed if his actions could lead others reasonably to question the employee's impartiality. I.R.M. 0735.1, Handbook of Employee Responsibilities and Conduct § 232.21, MT 0735.1-17 (November 26, 1986).

47. On June 22, 1988, plaintiff contacted IRS representatives from the Los Angeles office and asked why the the summonses had been issued to the Aznarans. The IRS refused to discuss the interview or confirm that it had taken place. Church counsel informed the IRS that the document review was

accordingly being suspended until the matter was resolved with the National Office. On June 24, 1988, in response to a letter from the Church regarding its concerns that the document review was apparently being conducted in bad faith, defendant Friedlander admitted that the IRS "owed [the churches] an explanation."

48. In January of 1988, prior to the start of the on site review, final adverse determinations were already drafted and circulated by Friedlander and Darling. After June 27, 1988, while the Churches were awaiting defendant Friedlander's promised explanation, the IRS finalized the adverse determination letters from the pre-existing drafts without substantive amendment. On July 7, 1988, the IRS informed CST that in its view the IRS had proceeded in accordance with the March 17 agreement and that it viewed the suspension of the audit as a termination of that agreement.

49. The following day, July 8, 1988, plaintiff and the other Churches wrote the IRS reiterating that they had not terminated the examination, but were waiting for the promised explanation regarding the Aznaran interview. The letters stated that the Churches did wish to fulfill the terms of the March 17, 1988 agreement, and that all they sought was a meeting with the IRS to clarify matters before the examination procedure resumed. That same day the IRS issued final adverse ruling letters to all three churches denying tax-exempt status. These letters were nearly identical to those drafted six months earlier by Friedlander and Darling. Despite previous assurances to the contrary, the denials of the applications of

plaintiff and RTC were based, in part, on alleged commercialism in the sale of religious goods and services.

50. The IRS on-site review procedure was an utter sham, designed not to make any good faith determination of the tax exempt status of plaintiff, but merely to continue to collect information which would not otherwise have been provided to the IRS. The on-site reviews also included examination of myriad ecclesiastical and confidential Church scriptural materials and other materials concerning the religious practices of the Churches which had no reasonable relation to any tax exemption issue.

51. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff because of its position as Mother Church of the Scientology religion and, through those acts, have invidiously discriminated against plaintiff in their application of the laws of the United States, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

52. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

53. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the

Due Process Clause of the Fifth Amendment to the United States Constitution.

54. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

THIRD CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

55. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 54, inclusive.

56. The IRS began additional harassive actions against plaintiff and Scientology parishioners commencing in October, 1988, when the IRS issued letters to several Scientologist taxpayers, who had claimed deductions on their tax returns for money paid to their Scientology churches for religious services, informing them that their cases were part of a "designated tax shelter litigation project entitled Scientology." Such a designation was blatantly improper and demonstrated discriminatory bias and creation of a suspect category of members of the Scientology religion.

57. Similarly, on February 14, 1989, the IRS office in Laguna Niguel, California sent a letter to two Scientologists concerning Church-related deductions, stating that no deduction would be allowed as they had not shown that Scientology is "other than a sham designed for the purpose of claiming

fictitious charitable contributions." This statement, too, was blatantly false and the result of bias, since even the IRS has repeatedly acknowledged that Scientology is a bona fide religion and that Scientology churches are bona fide churches. The IRS was forced to correct their files to delete these references after the Scientologists who received this letter prevailed in Smith v. Brady, No. CV 89-2584-RG(Bx) (C.D. Cal. 1990). Indeed, the IRS acknowledged that such designations were improper in a national office memorandum issued in 1986, yet the IRS continued labelling Scientologists as tax protestors as late as 1989.

58. Documents obtained in FOIA litigation reveal an entire set of procedures set up for the purpose of targetting the tax returns of individual Scientologists, monitoring and coordinating the investigations of these individuals, and falsely designating them as "tax protestors." These documents, from the Los Angeles District, show that the returns of Scientologists who claim deductions for their contributions to the Church are designated with a special code for "Alleged Contributions (incl. Scientology & Alleged Church)". This code is part of the Tax Protestor Program described in the Internal Revenue Manual, and allows the returns, which are treated as "priority cases," to be "controlled" through the IRS' nationwide computer system. A special questionnaire for Scientology cases is included for use by IRS examiners. An internal memo, designed to assist IRS examiners in handling these cases, lists several organizations which have never even existed, and claims that these are names used by the "Church of

Scientology."

59. Defendant Melvin Blough attempted to utilize the Church audit procedures of 26 U.S.C. § 7611 to identify thousands of parishioners of the Church of Scientology Flag Service Organization ("CSFSO") for the purpose of selecting their personal tax returns for audit. Blough testified that he wished to obtain records from CSFSO which would: (a) identify all of its parishioners for a three year period; (b) identify each of the courses delivered by CSFSO and describe them; (c) identify the courses taken by the parishioners; and (d) pull the tax returns of a number of these individuals. Blough stated that CSFSO provides courses to an estimated 8,000 parishioners a year, and further claimed that the IRS would use as many agents as needed to compile this information. In fact, nearly 100 parishioners of CSFSO have received audit notices regarding their contributions to the Church since Blough announced his plans. Blough also utilized the Cult Awareness Network ("CAN") as a means to improperly gather information regarding the Church. CAN is a modern day hate group, whose tactics include kidnapping, brainwashing and beating of individuals found to be guilty of holding "unacceptable" religious convictions. Despite these activities, CAN was granted tax exempt status by the IRS, and was used by Blough as an information gathering arm, for the purpose of procuring information on individual Scientologists and their businesses.

60. Assaults on churches of Scientology by or as a result of actions by IRS personnel have not been limited to the borders of the United States. William Connett is now stationed

as the IRS' foreign representative in France where he has a wide range of influence in European countries. Since his posting there have been raids on churches of Scientology by police and taxing authorities and unwarranted arrests of individual Scientologists in France, Italy and Spain. When two staff members of the Church of Scientology in Brussells were initially denied visas to travel to the United States, this was traced directly back to false information provided to the consulate officials by Connett.

61. In an effort to harass, discredit and smear plaintiff, to intimidate IRS employees who might otherwise treat plaintiff fairly or disclose IRS misconduct, and to evade FOIA disclosure obligations, defendant Keith Alan Kuhn has begun to proliferate unsubstantiated and patently false allegations against Scientology and Scientologists, which have been used as a pretext to manufacture security risks to IRS employees. In or about May 1990, Kuhn sent out a memorandum to each of the Regional Inspectors around the country, directing them to contact specifically named EO employees who were working on Scientology cases. Based on scurillous and unsubstantiated charges, Kuhn directed that these EO employees be told that there was a potential for harassment against them from the Church, thus creating a climate where plaintiff and other Scientology churches could not possibly receive unbiased treatment from any EO agent throughout the country. Kuhn's allegations themselves are entirely without merit. The IRS filed a declaration by Kuhn which contained these charges in a FOIA case brought by a Scientology Church. The District Court

judge in that case ordered the declaration stricken from the record, describing it as "scurrilous" and "unfounded".

62. After the collapse of the criminal investigation and after denying section 501(c)(3) exemption to plaintiff, RTC and CST, the nationwide examination of exempt and nonexempt Scientology Churches and entities which had been planned early in 1986 was resuscitated by defendants and the IRS. A three-day meeting on Scientology was convened at the IRS National Office on October 19, 20 and 21, 1988 to coordinate nationwide actions against various Scientology Churches, including plaintiff.

63. That three-day meeting was ordered by defendant Brauer, organized and convened by defendant Owens, and chaired by defendant Friedlander. Also in attendance were:

a. EO Operations employee Tom Miller, who had drafted the 1986 proposal to re-examine the exempt Scientology Churches;

b. Roderick Darling;

c. LA EO Branch Chief Mel Joseph, along with defendants Young and Corsi;

d. Defendant Blough;

e. IRS agents from at least the Brooklyn, Baltimore, and Los Angeles Regional offices; and

f. IRS National Office representatives.

64. Various strategic plans for a continued IRS campaign directed at Scientology were discussed at the three-day meeting in October 1988. Defendant Young prepared and delivered a

briefing at that conference in which he proposed that and explained how the IRS could use the assessment of tax liabilities under the Federal Insurance Contribution Act ("FICA") and the Federal Unemployment Tax Act ("FUTA") to exploit the non-exempt status of various Scientology Churches, completely disregarding the fact that the Churches in question, including plaintiff, had filed waivers seeking exemption from those employment taxes which had been accepted by the IRS.

65. At that same three-day meeting, format material for a nationwide campaign of examinations of exempt and non-exempt Scientology Churches was distributed and discussed, and the decision was made during that meeting to commence tax inquiries of plaintiff, Church of Scientology Western United States ("CSWUS"), Church of Scientology Flag Service Organization ("CSFSO"), Founding Church of Scientology of Washington, D.C. ("FCDC") and Church of Scientology of Boston ("Boston Church"). Those inquiries in fact did commence, upon the issuance of notices of tax inquiry to those Churches which were circulated during that three-day meeting.

66. Upon receipt of the virtually identical notices of tax inquiry, plaintiff, CSWUS, CSFSO, FCDC, and the Boston Church responded by pointing out inaccuracies and deficiencies in the standardized, coordinated notices and, despite those infirmities, responded to the questions posed by those notices. In each instance, however, the IRS issued a notice of church examination under the Church Audit Procedures Act, 26 U.S.C. § 7611. In four of those, summonses were issued and summons enforcement proceedings commenced in the appropriate district

court. In the CSFSO case, the matter is still pending in the United States District Court for Middle District of Florida; this Court, the Honorable Harry L. Hupp, presiding, quashed the majority of both the summonses issued to CSWUS and plaintiff; the United States District Court for the District of Massachusetts quashed the summons to the Boston Church outright. The FCDC examination was conducted, and despite nearly two years of intrusive inquiry, the IRS declined to cancel FCDC's exemption.

67. The coordinated examinations of those five distinct churches were coupled with concurrently timed IRS activities directed against other Scientology Churches and individual Scientologists. These various coordinated activities against Scientology are the responsibility of what defendant Owens has described as "thousands of [IRS] employees in key districts and district offices around the country and the National Office." Those coordinated actions have also been the subject of later meetings on Scientology at the IRS National Office, involving as many as 40 attendees from different IRS regions and divisions, in pursuit of what the SAR termed the "final halt to" and "ultimate disintegration of" Scientology.

68. Such coordination of IRS offenses against Scientology Churches and Scientologists generally also reaches down to the LA District level. Since approximately July 1989, monthly meetings have been held at the Pasadena, California courthouse that houses the United States Court of Appeals for the Ninth Circuit, to coordinate the actions of the Los Angeles EO (represented at such meetings by defendant Young), Examinations

Division, and upon information and belief, LA CID. These monthly meetings are arranged and coordinated by the Los Angeles District Counsel's office, and are attended by a number of District Counsel staff and, in fact, are chaired by defendant Jeglikowski, who supervises the meetings and the matters coordinated therein, against plaintiff and other Scientology Churches in disregard of the Constitution, the Internal Revenue Code, and policies set forth in the Internal Revenue Code. A regular topic of these meetings has been civil lawsuits involving plaintiff and other Scientology churches. The cases specifically include the civil suit filed by the Aznarans, and a case involving a former attorney for the Church. Defendant Jeglikowski has met with an attorney for one of the civil litigants, for purposes of coordinating actions between the IRS and the civil litigants against plaintiff.

69. The monthly meetings in Pasadena, like the meetings held from time to time at the National Office, are the vehicles by which defendants have singled out a religion and its churches and parishioners for singular and unfair treatment based upon their religious affiliation and set about to administer the Internal Revenue Code in a manner designed specifically to affect such co-religionists in an arbitrary and capricious manner, and to cause the harm hereinafter averred.

70. Plaintiff has made repeated efforts to resolve any legitimate concerns on the part of the IRS. As shown above, the Church has provided voluminous information to the IRS over the years to allay any concerns and to respond to any legitimate questions. These efforts on the part of the Church

have been either been perverted (as in the use of this information for purposes of a CID investigation), or rebuffed. Within the past few months, plaintiff once again attempted to resolve various issues with EP/EO representatives, including defendant Owens. However, the IRS continuously demanded the production of voluminous quantities of documents as a precondition for further talks. Most of the information requested had previously been provided to the IRS over the past years, yet the EP/EO representatives demanded it once again. When informed that the production of documents being requested on a voluntary basis was so extensive as to require months if not years to review, one representative of EP/EO remarked that this did not concern him, as he had twelve years left in the IRS before retirement.

71. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

72. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

73. The conduct alleged herein is ongoing and, unless

enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology Churches or any other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

FOURTH CLAIM FOR RELIEF

(For Fifth Amendment Violations by All Defendants)

74. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 73, inclusive.

75. Defendants have, in the course of conduct hereinabove averred, acted in violation of the Constitution, the laws of the United States, and the policies, and procedures, and practices of the IRS created by the IRS for the benefit of taxpayers. Such conduct is a denial of plaintiff's due process rights as set forth in the Fifth Amendment to the United States Constitution.

76. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

77. The conduct alleged herein is ongoing and, unless enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology churches or any

other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

WHEREFORE, plaintiff Church of Scientology International prays that:

78. Defendants, and each of them, be preliminarily and permanently enjoined from any and all further participation in and responsibility for any matter involving the IRS and plaintiff or any other Scientology Church or entity, or any Scientology parishioner;

79. Plaintiff be awarded damages according to proof, which are believed to be in excess of $20,792,850 in direct expenditures by plaintiff, and consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million, and

80. The Court award and order such other and further relief that it deems appropriate under these circumstances.

Dated: August 12, 1991

Respectfully submitted,

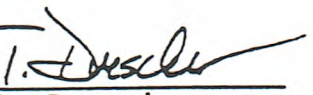
QUINN, KULLY AND MORROW

COOLEY, MANION, MOORE & JONES, P.C.

BERRY & CAHALAN

BOWLES & MOXON

WILLIAM T. DRESCHER

By: 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Plaintiff, v. GERALD ARMSTRONG, et al., Defendants. AND RELATED CROSS-ACTION	CASE NO. C 420 153 FURTHER RESPONSE TO ORDER OF JULY 2, 1985; REQUEST FOR STAY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF JOHN G. PETERSON DATE: February 12, 1986 TIME: 9:00 a.m. DEPT: 57

PLEASE TAKE NOTICE that on February 12, 1986, at 9:00 a.m. or as soon thereafter as counsel may be heard, in Department 57 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California, Cross-Defendant Church of Scientology of California will move for a stay of the Court's order of July 2, 1985 as set forth herein.

Also, set forth herein is cross-defendant's further response to the Court's order of July 2, 1985.

This Motion is brought pursuant to Code of Civil Procedure Section 128(8), Evidence Code Section 320, the attached Memorandum of Points and Authorities, the attached Declaration of John G. Peterson, the pleadings on file in the above-named case, and all such matters oral and documentary as

may be brought to the attention of the Court at or prior to the hearing on this Motion.

Dated: January 22, 1986

Respectfully submitted,

PETERSON AND BRYNAN

By: John G. Peterson
JOHN G. PETERSON, ESQ.

Attorneys for Cross-Defendant Church of Scientology of California

MEMORANDUM OF POINTS AND AUTHORITIES

I

PRELIMINARY STATEMENT

The Church of Scientology of California [hereinafter the "Church"] is now faced with either "possible contempt or other sanctions" as threatened by this Court in its order of July 31, 1985, or with submission to the destruction of its First Amendment rights and the near certainty of false claims concerning the disclosure of information from its auditing files should Gerald Armstrong [hereinafter "Armstrong"] ever receive them through discovery.

On July 2, 1985, this Court issued an order requiring the Church to produce, for an in camera inspection, the auditing or preclear files relating to Gerald Armstrong. The Court also ordered the Church to produce or furnish for inspection "all matter which reflects any statement, or summary of statements" made by Armstrong contained in those auditing files.

After several stays of the Order were entered and vacated, this Court on December 9, 1985, ordered that compliance be made to its order of July 2, 1985, as modified, within twenty days -- by January 3, 1985. A stipulation between the parties continuing compliance until January 22, 1986, was subsequently filed and granted.

In Armstrong's Third Amended Cross-Complaint, he alleges in the fraud cause of action that auditing disclosures were represented to him to be completely confidential and that this was false (page 17 section e and

page 18 paragraph 15) and is also alleged under the Breach of Contract cause of action (page 28, paragraph 39 and page 30, paragraph 42). In Armstrong's second cause of action for Intentional Infliction of Emotional Distress at page 23, paragraphs 23 and 24, he alleges that the Church "disclosed to third persons the confidential information disclosed by Cross-complainant during auditing." Armstrong supports his need to discover his preclear folders based on these claims in his complaint; however, he has been unable to show any facts or evidence to support these claims.

At no point, either in discovery or in the underlying trial, has Armstrong been willing or able to state exactly what information was supposedly disseminated from the auditing files and to whom.

> "Q Do you contend that at any time since December 12, 1981, any confidential material contained in an auditing or pre-clear or any other kind of confidential file has been disseminated concerning you?
>
> "A Excuse me?
>
> "Q Do you contend that any confidential information contained in a pre-clear, auditing, or other confidential-type processing file has been disseminated concerning you?
>
> "A I don't know."

August 18, 1982 Deposition, pp. 230-231. Instead, he has made generalized statements. He makes speculative unsupported claims to "prove" that it happened to others and so must have happened to him. He now claims that he must first learn what information is in these auditing files before he can determine what information was

disseminated. This is circular reasoning and surely improper pleading. A claim must be made on a good faith belief and some facts to support the belief in that claim. To plead a cause of action without any basis in an attempt to justify a fishing expedition and an unconstitutional intrusion into internal ecclesiastical folders is improper. It has always been the internal law of the Church that a preclear would never see his or her pc folder. Armstrong knew it, understood it and agreed to abide by this internal ecclesiastical law. This civil court cannot violate this constitutionally protected area of the religion. Serbian Eastern Orthodox v. Milivojevich, (1976) 426 U.S. 696 (the Court held that civil courts may not inquire at all into "matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law."; In Watson v. Jones, 13 Wall (80 U.S.) 666 (1872) the Court held that:

> "The judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the conditions of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals."

If Armstrong is allowed the ability to review the auditing files, and to determine what information is contained in them, he will plant forged documents, manufacture false evidence and suborn perjured testimony, and then falsely claim that this preclear information was disseminated by

the Church.

The Church is gravely concerned about this likelihood for the following reasons:

1. The auditing files almost certainly contain information relating to the great majority of Armstrong's life, thereby allowing him to choose almost any traumatic event in his life , manufacture false evidence and claim that the Church disseminated that information;

2. Armstrong has admitted, under oath and after leaving the Church, that he knew of no dissemination of information from his preclear files;

3. Armstrong has admitted, in a videotaped interview, to creating forged documents for placement in Church files for the sole purpose of giving the false appearance of unethical or illegal actions committed by the Church; and

4. Armstrong has admitted, in a videotaped interview, his intention to commit perjury, as well as advising others that proof is not required to make allegations.

For these reasons, as detailed more fully below, the Church requests that Armstrong be required to execute an itemized, verified offer of proof regarding the information he alleges has been disseminated from auditing files before the court proceeds further. The Church is confident that Armstrong cannot show good cause why he needs the preclear folders. Also, a summary judgment motion to be filed by January 24, 1986, will make them irrelevant.

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A. Information Demonstrating The Likelihood That Armstrong Will Falsely Claim Dissemination Of Auditing Files

In late 1984, Armstrong met and surreptitiously conspired with Church of Scientology staff members, known as the "Loyalists", whom he believed to be opponents of current Church management. In November, 1984, several police sanctioned videotapes were made of such meetings between Armstrong and these persons and, in April, 1985, these videotapes and portions of other written materials furnished by Armstrong to the Loyalists were introduced as exhibits in the trial of Julie Christofferson Titchbourne v. Church of Scientology, Mission of Davis, et al., Circuit Court of the County of Multnomah, Oregon, No. A7704-05184.

The videotapes show that during his meetings with the Loyalists, Armstrong made a number of admissions reflecting directly on his criminal state of mind and the reliability of his testimony. For example:

1. He admitted his intention to create forged documents, and indicated that he had done so previously:

> MR. ARMSTRONG: Well, I got a view, of course, from you, of course, that someone at least considered that I HELP [International Hubbard Ecclesiastical League of Pastors] was, you know, their Achilles heel, as it were. (LAUGHS) So we thought, "Shit, shouldn't I get some I HELP materials?" So hence I asked. Now issues, [Church bulletins] I wanted to know, number one, how they're run off, what the type face is like. Are these like this? You know -
>
> MR. JOEY: These are the real McCoys.

> MR. ARMSTRONG: You see, because I think that during a part of this, we can simply create these. You know, I can create documents with relative ease, (LAUGHS) you know; I did it for a living. (LAUGHS) Transcript of November 7, 1984, p. 4, attached hereto as Exhibit "A" to Declaration of John G. Peterson. (emphasis supplied)

2. He stated his intention to "bring them [Church management] to their knees." Transcript of November 7, 1984, p. 9, attached hereto as Exhibit "A" to Declaration of John G. Peterson.

3. He admitted that he had been involved in working against the Church even prior to the time that he officially left in December, 1981:

> MR. JOEY: What's your -
>
> MR. ARMSTRONG: My purpose?
>
> MR. JOEY: Yeah. For the Church.
>
> MR. ARMSTRONG: Well, my purpose initially is global settlement. I want that. I've done this shit now for going on three years, and even longer before that when I was inside . . . . Transcript of November 7, 1984, p. 13, attached hereto as Exhibit "A" to Declaration of John G. Peterson. (emphasis supplied)

Armstrong's own words above clearly show his intention and how he used the Court to satisfy his plans. He was plotting to bring church management to its knees so he could extort a settlement of his $81.4 million personal injury case. The videotape shows that even while he was still in the Church he was plotting his personal injury case and he lied to this Court when he testified that he stole documents to protect himself. He stole documents

only to extort money from the Church and use in his personal injury case. The candid and recorded words out of Armstrong's own mouth show conclusively the lengths he will go in order to make and forward his personal injury case. Armstrong has no evidence of any dissemination from the pc folders and he is seeking access to them only to manufacture and plant false evidence to bolster his deficient claim.

4. He furnished a variety of "literary" materials, apparently for potential publication, to a member of the Loyalists, including the disgusting "Operation Long Prong" attached as Exhibit "E" to the Declaration of John G. Peterson. The extremes of illegality to which Armstrong was prepared to go in order to carry out this conspiracy is demonstrated by a blackmail and extortion scheme called "Long Prong" which Armstrong attempted to perpetrate. This was a plan to set up a senior Scientologist with a woman in order to upset his marriage, degrade his reputation within the Church and blackmail his cooperation in Armstrong's scheme to subvert Church of Scientology management. (See also p. 21 of Exhibit "A" for discussion of furnishing such "art work" for publication.)

5. While he claimed in the videotape that his goal was "global settlement," Armstrong admitted that it was still, if settlement failed, his intention to continue with his $81.4 million suit because "that's going to pay off sooner or later. "Exhibit "A" at p. 23.

6. As an example of how Armstrong would not hesitate

to commit perjury to support his case or a claim for damages, in testimony in Oregon he admitted that, despite his prior testimony in the underlying case herein that L. Ron Hubbard controlled the Church; in the subsequent Christofferson trial, he stated under oath that he did not know who was actually in control of the Church:

> MR. ARMSTRONG: Well, who is ASI? Who are these people? Give me an org board. Tell me who the opposition is, who knows what. Where does Marc Yager fit in all of this, you know, what is the actual line of control? Who is in charge? 'Cause someone is. . . . Transcript of November 9, 1984, p. 6, attached hereto as Exhibit "B" to the Declaration of John G. Peterson. (emphasis supplied)

7. He admitted that he would perjure himself, and attempted to suborn the perjury of "Mr. Joey":

> MR. ARMSTRONG: By the way, I'll never admit that anything comes from Michael [Flynn], including any complaints which I may have drafted. (Transcript of November 9, 1984, p. 7, attached hereto as Exhibit "B" to Declaration of John G. Peterson.
>
> * * *
>
> MR. ARMSTRONG: Okay. What are our conversations, should it come down to it.
>
> MR. JOEY: What do you mean?
>
> MR. ARMSTRONG: What do we talk about? You're deposed. You walk out there and there's a PI, he hands you a paper saying you're deposed, Jack. And not only that, you're out of the organization. And, and what do you say in deposition? Well, Armstrong and I talked about this and he had a whole bunch of ideas about how to infiltrate the communication lines and spread turmoil and disaster, you know. What are we doing here? That's my question,

before I'll tell you my ideas on documents.

. . . .

MR. ARMSTRONG: Okay. So as far as the doc - let me just say . . . ah, this is why we get together. We get together because I have a goal of global settlement. You have felt that the turmoil and abuses and, so on have gone on too long - hence we get together and discuss things. We have not discussed anything about a destruction of the tech, or that Scientology is bad, or anything like that. Are we agreed? (Transcript of November 9, 1984, pp. 9-10, attached hereto as Exhibit "B" to Declaration of John G. Peterson.)

8. He proposed the creation of phony documents which could be spread throughout the Church through the use of internal communications lines:

MR. ARMSTRONG: People can draft the stuff. Um, it just seems like - the guts of - you know, there's three things, right - there's personnel and comm lines and money. That's about it. <u>An organization's comm lines are of various kinds, and I think that you can use the fact, you know, realize what their comm lines are and plug into them. That's all I was trying to convey. . . .</u> Transcript of November 9, 1984, p. 7, attached hereto as Exhibit "B" to Declaration of John G. Peterson

* * *

MR. ARMSTRONG: . . . So it seems to me that the use of the communication lines - I don't know maybe you guys are using them, but it seems to me that you don't have a way of printing anything to get an issue [Church document] on the lines, to use for anything, right? I'm saying that I can do it. I'm saying that <u>I can type those goddamn things and duplicate them and make them look exactly the same</u>. . . . (Transcript of November 9, 1984, p. 11, attached hereto

as Exhibit "B" to Declaration of John G. Peterson.) (emphasis supplied)

Armstrong's statements clearly indicate his willingness to plant documents in order to create false pictures and destroy the Church. If Armstrong had access to the preclear folders he could forge "Church" documents showing improper use of the preclear folders and plant these documents in the Church or have them anonymously mailed to his attorneys. If allowed access to these materials, he is obviously more than capable of anonymously sending them to the Los Angeles "Times" or to friends, solely to claim "dissemination" by the Church to support a non-existent claim and to boost his already outrageous damages demands. The Court must not forget that it is Armstrong and his counsel, Michael Flynn, who already appear to have violated this Court's sealing orders as set forth in the pending Motion to Initiate an Investigation. Their lack of respect for the privacy of others, as revealed in the Motion for Investigation, leads to the inescapable conclusion that they will not hesitate now to violate any sealing orders in exchange for the chance to falsely create "damages" for Armstrong.

This Court must also remember that Michael Flynn has also evidenced a propensity for the public dissemination of auditing information pertaining to his clients. On June 25, 1983, during a public speech he gave to a group calling itself "Phoenix" in Los Angeles, Flynn divulged auditing information relating to several of his clients -- Marjorie Hansen and Janet Troy. Flynn had obtained this information

from another client of Flynn's who had wrongfully obtained the pc folders. (See Transcript of speech, attached to Declaration of John G. Peterson as Exhibit "F".) Where he thinks it to his benefit, as he might well here, Flynn has already proven himself capable of widely disseminating such information to the detriment of his client.

Having the preclear folders held either in camera or under seal is no protection at all. Were the Church to produce the preclear files in chambers or under seal, the Court were to deny Armstrong access to the folders, counter-claimant could take a Writ and ask that the preclear folders be made an exhibit and part of the record. Sealed exhibits are not safe in Los Angeles Superior Court as proved in the underlying case when IRS agents wrongfully obtained access to and copied sealed materials. This court has already expressed its view that documents that come before this court become exhibits and open to the public. The history of this case proves that seals and in camera submissions are meaningless.

The Court of Appeal has held that attorney-client privileged documents should not be viewed in camera. The Church strongly believes that priest-penitent documents hold an equal if not greater degree of privilege. Any submission either under seal or in camera is not only a violation of the spirit of the law of privilege but an unconstitutional violation of the Church's rights.

The above examples, and others included in the attached Declaration of John G. Peterson, conclusively demonstrate that

Armstrong is willing to stoop to any lengths, including the commission of such illegal acts as conspiracy, perjury, subornation of perjury, and forgery to achieve the destruction or overthrow of the Church and to pursue his personal injury case. He appears to be unstable, as demonstrated by the exhibits to Mr. Peterson's declaration, and this type of instability lends great credence to the Church's belief that he will use materials from the auditing files to falsely claim information has been disseminated. Armstrong knows that there is no factual basis for his claim that the Church has disseminated preclear information, and the request for the auditing files has been no more than a desperate attempt gain information to allow him to manufacture and plant phony documents to support his allegations.

II.

BECAUSE A DISPOSITIVE MOTION IS SOON TO BE FILED PENDING, A STAY SHOULD BE GRANTED UNTIL THESE ARE HEARD

The Church has raised serious objections to this Court's Order of July 2, 1985. Nonetheless, this Court has chosen to ignore those objections, and to order the production of sacred and ecclesiastical materials. The circumstances now existing demand an equitable solution. This Court should stay its Order pending resolution of the Motion for Partial Summary Adjudication of Issues which the Church will be filing on January 24, 1985. The granting of that Motion will dismiss those portions of the cross-complaint relating to dissemination of auditing

information and will moot that section of the order of July 2, 1985 ordering production of the auditing files. This Court must also stay its Order of July 2, 1985 pending resolution of the Motion to Initiate an Investigation as the results of that investigation will clearly point out the danger of wrongful access to confidential materials surrendered to the Court or turned over to Armstrong and his counsel. The results of that investigation will be conclusive that these preclear folders must remain with the Church to protect everyones' interests of privacy and confidentiality, even Armstrong's.

III

THIS COURT HAS THE AUTHORITY TO ENSURE JUSTICE RESULTS BY SETTING THE ORDER IN WHICH EVIDENCE IS INTRODUCED

Code of Civil Procedure § 128(a)(8) authorizes this Court to take the steps necessary to ensure that justice results from the current situation:

> "(a) Every court shall have the power to do all of the following:
> . . .
> (8) To amend and control its process and orders so as to make them conform to law and justice."

Moreover, Evidence Code § 320 specifically authorizes this Court to establish the order in which proof is presented:

> "Except as otherwise provided by law, the court in its discretion shall regulate the order of proof."

Together, these code sections clearly authorize this Court to amend its order of July 2, 1985 by requiring that Armstrong furnish an itemized, verified offer of proof.

IV

CONCLUSION

This Court has the inherent power to ensure that justice results from its rulings. It should require Armstrong to furnish an itemized, verified offer of proof as to the specific information he alleges has been disclosed from the auditing files relating to him. It should also stay execution of its Order of July 2, 1985 until the Motion for Partial Summary Adjudication of Issues has been resolved, and until the pending Motion for Investigation has been resolved and the investigation completed. To do otherwise, in view of Armstrong's admitted intention to commit perjury, to forge and plant documents in files, and his extreme instability, would create injustice and inequity.

Dated: January 22, 1986

Respectfully submitted,

PETERSON AND BRYNAN

By: John G. Peterson
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTERCLAIMS.	CASE No. CV 88-1786 JMI(Ex) SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; DECLARATIONS OF SAM BROWN, THORN SMITH, EDWARD AUSTIN, LYNN R. FARNY AND LAURIE J. BARTILSON DATE: To be determined TIME: To be determined COURTROOM: Hon. James M. Ideman

When the Court entered its Order of July 22, 1991, vacating the appearance of Joseph A. Yanny ("Yanny") as counsel for plaintiffs because that appearance was "inappropriate and highly prejudicial to Defendants," and reinstating Ford Greene ("Greene") as plaintiffs' counsel, the Court undoubtedly intended that Yanny's participation in this case would cease. Defendants predicted that mere disqualification of Yanny would not cure the deep-rooted problem, and accordingly filed their Motion to Dismiss the Complaint. It has now come to defendants' attention that Yanny's involvement in this case has in fact survived that Order, and that Yanny has returned to his covert representation of the Aznarans, similar to the arrangement that existed prior to his direct entry into the case. As a result of this information, defendants are forced to supplement their motion to dismiss the complaint with prejudice, to bring to the Court's attention Yanny's continuing participation in this matter as additional grounds warranting dismissal.

There are two manifestations of Yanny's ongoing aid to the Aznarans that are known to defendants. At this time, they can only speculate as to what other involvement exists. The assistance furnished by Yanny has taken the visible form of supplying Greene with help from two of Yanny's present or former employees.

The first of these employees, John Koresko, was formerly the office manager, and later a paralegal for Yanny's law firm, during the pendency of this litigation, Yanny's own litigation with defendants herein and during the time that Yanny was

counsel to these defendants. (Ex. A, Deposition of John Koresko, at 65-67.) Yet, as more fully detailed in the declarations of Edward Austin, Thorn Smith and Lynn R. Farny, subsequent to Yanny's disqualification from representing the Aznarans, Koresko was seen at Greene's office on August 3 and 4. On August 3, Koresko arrived at Greene's office at 5:14 p.m. and was not observed leaving.[1/]

The extensive involvement of Yanny's other employee in this case following Yanny's disqualification also recently came to the attention of defendants. On August 19, 1991, by order of the Court extending their time to respond, plaintiffs had oppositions to six motions due. (Order of August 9, 1991.) On that date, Greene filed three papers with the Court, oppositions to two summary judgment motions and a 53-page "Appendix." During the time period in which those papers were being prepared, an individual named Gerald Armstrong ("Armstrong") was observed at Greene's office each day from August 15 through 19 for most of each of those days. (Ex. D, Declaration of Sam Brown; Ex. E, Declaration of Lynn R. Farny.) In addition, when Laurie Bartilson, counsel for defendant Church of Scientology International, called Greene's office on August 19 to arrange

1. While plaintiffs may try to pass off Koresko's presence as a simple matter of returning the case files, this is belied by the sworn testimony of their varying counsel. Yanny claimed on July 31, 1991, that he had never received the file from Greene. (Ex. B) On August 1, 1991, Greene swore that he had sent the file to Los Angeles by Federal Express on June 27, 1991. (Ex. C, Declaration of Ford Greene, para. 11.) He claimed that he then received the case file from his new co-counsel, Mr. Elstead - not Yanny - on July 31, 1991, three days before Koresko's appearance at Greene's offices.

to have a courier pick up the oppositions, the telephone was answered by a person who identified himself as Gerald Armstrong ("Armstrong"). (Ex. F, Declaration of Laurie J. Bartilson, para. 3.) When queried as to his presence there, Armstrong stated that he was "helping out." (Id.) Additional papers were late-filed with the Court by Greene on August 23, and not surprisingly, Armstrong's presence at Greene's office continued after the August 19 filings for several more days. (Ex. D, Declaration of Sam Brown, para. 3.)

Armstrong has recently been identified as a paralegal hired by Yanny to work with him on this case. Yanny represented in argument to Los Angeles Superior Court that he had "hired Armstrong as a paralegal to help [him] on the Aznaran case." (Ex. G, Reporter's Transcript of August 6, 1991, at 25.) Armstrong confirmed this characterization, as did Yanny in a declaration. (Ex. B, Declaration of Joseph A. Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's paralegal on this case, his new affiliation as an assistant to Ford Greene is truly outrageous. Not only has Yanny been disqualified point blank by the Court from representing the Aznarans, he has also been forbidden from directly or indirectly acting as counsel against defendants on behalf of the Aznarans or Gerald Armstrong by preliminary injunction entered on August 6 at the hearing in which the statement was proffered that Armstrong was his paralegal on this case. Religious Technology Center, et al. v. Yanny, et al., Case No. BC 033035. (Ex. G, Transcript of August 6, 1991, at

3-4.)

This Court disqualified attorney Barry Van Sickle from representing plaintiffs as being "an extension of Joseph Yanny's continuing involvement in the instant action." (slip. op. September 6, 1988). Here again, Yanny's involvement in this case continues, this time through a different "extension" -- the improper activities of Yanny's paralegal, Gerald Armstrong, whose actions are just as improper as they would be if done by a lawyer. In re Complex Asbestos Litigation 91 D.A.R. 8849 (1991).

That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in November 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations in Court against the Church leadership:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.

RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --

ARMSTRONG: Fucking say the organization destroys the documents.

* * *

Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it.

(Ex. E, Declaration of Lynn R. Farny, para. 6.) With such a criminal attitude, Armstrong fits perfectly into Yanny's game plan for the Aznaran case.

It is apparent that Yanny's disqualification from this case has simply driven him back underground. He challenged the Court by appearing directly in this case and lost. So he now sends his paralegals to aid Greene in his prosecution of the case, thereby doing indirectly what this Court and the Los Angeles Superior Court have forbidden him to do at all. Greene and the Aznarans are obviously aware that the Court disqualified Yanny and ruled his participation in this case to be "highly prejudicial to Defendants" because of Yanny's former representation of defendants. This was the same order which removed Yanny and put Greene back into the case as plaintiffs' counsel. Thus, the Aznarans, their former attorney and their present attorney are equally culpable for permitting Yanny to continue his participation in this case to the adjudicated

///

///

prejudice of defendants. Only the remedy of dismissal can possibly disable their collusion in violation of defendants' rights permanently.

Dated: August 26, 1991

Respectfully submitted,

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IBIT A

CERTIFIED COPY

SUPERICR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

- - -

RELIGIOUS TECHNOLOGY CENTER, et al.,	)	
Plaintiffs,	)	
vs.	)	No. C690211
JOSEPH A. YANNY, et al.,	)	
Defendants.	)	

DEPOSITION OF

JOHN J. KORESKO

LOS ANGELES, CALIFORNIA

TUESDAY, JANUARY 10, 1989

ATKINSON-BAKER AND ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
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REPORTED BY: KAREN E. HOIDA, CSR NO. 7081

FILE NO.: 890032

A P P E A R A N C E S

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ALSO PRESENT:

NICOLE GARCIA
Video Technician

ARON MASON
Paralegal

I N D E X

WITNESS: JOHN J. KORESKO

Examination	Page
By Mr. Berry	5

EXHIBITS:

Plaintiffs'		Page
1	Notice of deposition	17
2	200 pages of various documents produced in response to document request	159

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None)

INFORMATION TO BE SUPPLIED:

(None)

a paralegal. Then I was elevated to a different position, and then I -- at a given point in time I went back to paralegal.

Q. Okay. When did you first become employed at Herzig & Yanny?

A. March '85.

Q. In what capacity?

A. Paralegal.

Q. What kinds of things did you do as a paralegal then?

A. Research, draft documents, engage in discovery, sit in on depositions. Normal paralegal things. Write memos.

Q. How long did you have that responsibility?

A. About four months.

Q. Did your responsibility change?

A. Yes. A -- Joe elevated me to an office manager position. He needed a central figure in the office to correlate the functions, so he felt that I had the qualifications to make it a cohesive office.

Q. And you were reporting directly to him in that capacity?

A. Directly to him.

Q. How long did you hold that job?

A. From approximately June '85 to October '87.

Q. October '87?

A. '87.'

Q. Were you continuously employed by Herzig & Yanny during that period?

A. Yes.

Q. Did your job function change in October of '87?

A. I quit.

Q. Did you go to work for somebody else?

A. No.

Q. Just quit?

A. I just had to get away. It was -- I quit, but it was like a leave of absence type thing. I just had to get away. Pressures, you know. The girl pressures, office pressures, money pressures.

Q. Just needed a break?

A. Los Angeles.

Q. Did you leave the city?

A. As a matter of fact, I did. I went to Texas, spent a few weeks in Texas with my brother, communed with nature in Arizona and Death

Valley, and just generally bummed around, feeling sorry for myself.

Q. And then came back to work at Herzig & Yanny?

A. Came back to work.

Q. And that --

A. They made me an offer I couldn't refuse.

Q. That was in December of '87?

A. December of '87 I came back to work.

Q. Okay.

A. In a lesser capacity, less responsibility.

Q. When you came back as a paralegal in December of '87, was there a particular person or persons who were designated as the office manager?

A. No.

Q. Has there been since?

A. No, sir.

Q. Is there any person who discharges that function of being an administrative coordinator or office manager?

A. I do a lot of the functions unofficially. Mr. Yanny would be the last word on decisions that I used to make.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, KAREN E. HOIDA, CSR #7081, Notary Public for the State of California, certify:

That the foregoing proceedings took place before me at the time and place therein set forth;

That the testimony of the witnesses and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 17th day of January, 1989.

OFFICIAL SEAL
KAREN E FLIEGEL
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires MAY 21, 1990

Karen E Hoida

Notary Public in and for the
State of California

DECLARATION OF JOSEPH A. YANNY

I, Joseph A. Yanny, make the following declarations from personal knowledge and could competently testify as set forth below if called upon to do so.

1. Declarant is a member in good standing of the California State Bar.

2. I am not an attorney in fact or of record in any case between Gerald Armstrong and any Church of Scientology entity, nor have I been consulted in that regard by either Scientology or Mr. Armstrong with respect to his litigation. I am informed that Mr. Armstrong has done quite well without me. I am informed that the court of appeals has recently issued an opinion on July 29, 1991 in that regard.

3. Mr. Armstrong has consulted me on literary matters involving questions of intellectual property. I decline to disclose the substance of that consultation further, but I will note, however, for the record, that that consultation had nothing at all to do with Scientology and had no relationship at all to anything I ever worked on for Scientology.

4. I have considered employing and have employed Mr. Armstrong as a paralegal from time-to-time in the past. I believe it would be inappropriate, if not illegal, to require that I not employ ex-Scientologists. Mr. Armstrong's views on Scientology should not cost him employment with my firm or elsewhere.

5. In addition, Mr. Armstrong is a potential witness in litigation I am contemplating against Scientology and in the Aznaran case. For example, Scientology has recently libeled me by

publishing materials that, among other things, falsely represent that I was found to be taking drugs and was "unable to maintain an acceptable level of performance and professional conduct." In the context of discussing the litigation, the libelous statement is made that, "Yanny proceeded to break attorney-client confidences." The litigation is described as "concerning his breach of contractual agreement." (The text will be offered at the hearing.) These claims are libelous per se. I anticipate that Mr. Armstrong may be a witness in the resulting litigation. Mr. Armstrong and the undersigned share the common problem of having been sued maliciously by the plaintiffs herein and is a prospective witness in that regard.

6. I have reviewed the purported declaration of Marty Rathbun filed by plaintiffs in support of their request for injunctive relief. The declaration is essentially a fabrication. It is a false description of the conversations I had with Mr. Rathbun on that date. I address what was actually said below. At no time during those conversations did I make any "admissions" to Mr. Rathbun. I have not breached any remaining fiduciary duties, nor have I "confessed" any breaches to Reverend Rathbun. The allegations concerning Ken Rose are particularly bizarre. I have never even met Ken Rose and do not believe I have ever spoken to him. I do not know who he is or what he may doing to make himself a target. I certainly did not discuss him with Mr. Rathbun.

7. On the day in question, Friday, July 21, 1991, I had two discussions with Mr. Rathbun. The principal discussion took place in the courthouse cafeteria during the afternoon. Mr. Rathbun approached me and attempted to engage me in conversation. It is now

apparent that Mr. Rathbun was attempting to initiate a conversation so that he could offer a false declaration as part of Scientology's mission to attack and destroy the undersigned.

8. I also spoke with Mr. Rathbun for several minutes outside the courthouse towards the end of the day. During this brief conversation, Mr. Rathbun commented that this suit was a "grand waste of time." He sarcastically commented, "Can you afford it?" He then added that I was going to go through the same thing again. When I asked him what he meant, his response was, "You know," - an obvious reference to the ordeal of past litigation. I commented to Mr. Rathbun that they were getting beaten in all of the litigation, and that this would continue, because they were criminal and that virtue does eventually triumph in the end. I also remarked that I had seen them attempt to ruin a number of lawyers previously employed by them under similar circumstances, i.e., Barry Litt, Mike Levanus, etc. As to the comments alleged in Mr. Rathbun's declaration, they simply did not occur.

9. Earlier in the day, Mr. Rathbun approached me in the cafeteria and engaged me in conversation. He started by remarking that I was "basically a good person" and that they could see to it that I "came out of this okay." Mr. Rathbun then tried to disavow or downplay certain criminal or inappropriate activities, such as stealing medical records and break-ins. I told him to drop the PR pitch, because I was there and knew better.

10. During this same conversation, Mr. Rathbun stated that I needed to accept my responsibility for certain things. Mr. Rathbun commented that, back when the relationship deteriorated, "Everything was going south on us." I responded that if he would

look at the record he would note that I had obtained good results for them. The problem was that I insisted on exercising my professional judgment rather than blindly following their orders. When I would not go along with some of their more questionable activities or tactics, they questioned my loyalty more than the quality of legal services.

11. Mr. Rathbun also stated that I had to accept my "overts" towards them. I indicated that I knew the whole point of the exercise was to ruin me. Pursuant to "tech," they had to "dead agent" me because I had disagreed with their criminal activities and knew too much about them. Accordingly, it was necessary for them to discredit me as a source of unfavorable information.

12. With respect to the Aznaran case, Mr. Rathbun's declaration on this point is simply more fabrication or distortion. I stated to Mr. Rathbun that what they had done to the Aznarans was foul play. While they were telling the Aznarans that they wanted to settle their case, in truth Scientology was poising to file lengthy and complex summary judgment motions at a time when the Aznarans were in propria persona. Scientology not only filed hundreds of pages of moving papers when the Aznarans were in pro per, they would not even stipulate to extensions of time for responsive papers. Scientology was attempting to reap a windfall by default in the courts. As an officer of the courts I was compelled to test the issue of whether I could represent the Aznarans.

13. Mr. Rathbun's response was reminiscent of the "Fair Game" policy. He did not deny that they were playing dirty pool. Mr. Rathbun commented that since the Aznarans had sued Scientology,

they deserved whatever treatment they received from Scientology. I told Mr. Rathbun that as an officer of the court I felt a duty to see to it that their dirty tricks did not bring about a miscarriage of justice. I informed Reverend Rathbun that he, too, had a duty to see to it that everyone obtained due process, and that this included the Aznarans.

14. Mr. Rathbun remarked that I apparently expected him to "go into agreement with the universe." I told him that he did not have to go into agreement with the universe, but that he had to deal with it and should do so within the rules. I told Reverend Rathbun that despite some of his criminal attitudes, he really was basically a good person and that if he ever came to his senses he would no doubt find himself locked up in the desert for it, just like Vicki was. I told him that if such a thing should occur, to make sure he kept my telephone number in a safe place, because he would be welcome in my house as a place of refuge.

15. During my conversations with Mr. Rathbun, I mentioned the "RICO" case referred to in Paragraph 2(a) of Mr. Rathbun's declaration. I mentioned to Mr. Rathbun that I had heard that things were not going well for them in that case. I am aware that the court has entered evidentiary sanctions for Scientology's refusal to produce documents and apparent destruction of relevant evidence. It has also come to my attention that Scientology has suffered some serious set-backs recently in that case. These are matters of public record, which are monitored by myself and others. That Scientology would consider it inappropriate for me to know such things only evidences their paranoia.

16. I am interested in such developments for several

reasons. First, Scientology has recently defamed me again by asserting that I performed incompetently. I believe an examination of events would reveal that the RICO case went well for Scientology when I was working on it. Since my departure from the case, Scientology's position has substantially deteriorated.

17. With respect to Mr. Rathbun's comments at Paragraph 2(c), this is a false repetition of the old claim that I am somehow responsible for Bent Corydon's litigation. Mr. Corydon is a long-time critic of Scientology and author of L. Ron Hubbard: Messiah or Madman? I applaud Mr. Corydon for standing up to and exposing these idiots. Mr. Rathbun's declaration on this point is simply another fabrication. Further, the comments are somewhat strange in that it is my understanding that Mr. Corydon has recently settled his litigation with Scientology.

18. Contrary to the Rathbun declaration, I have not been nor have I made representation that I have been coordinating and agitating former church members to generate adverse publicity. This again evidences their propensity to see conspiracies everywhere. I certainly did not make such a claim to Mr. Rathbun.

19. I am not in a position to make most existing adversaries of the church "go away." I did not make that claim to Mr. Rathbun. Mr. Rathbun has apparently distorted our conversation into whatever false statements he feels he needs to make in order to succeed before this court and is acting in conformity with the "Fair Game" policy previously recognized by this court in, as Scientology calls it, the Yanny I litigation, and most recently by the court of appeals in the Armstrong decision, which I will supply a copy of to this court at the time of the hearing of this matter.

"Reverend" Rathbun is a Scientologist, perceives me as an enemy, and consequently will lie, cheat, and do anything he needs to, per policy, to destroy the undersigned. I can only explain the contents of his declaration in that fashion. This court has previously dealt with his testimony and should give it as much weight now as it did then.

20. With respect to the Aznaran case in federal court, I properly reacted to what I perceived to be a crisis situation created by Scientology and previously documented to this court. I would have preferred not to have become involved. However, it was and is my professional opinion that as an officer of the court it was appropriate for me to have entered an appearance in that case and allow the appropriate "case-by-case" determination to be made in the appropriate court. In the alternative, I was faced with a possible miscarriage of justice occurring without the undersigned even testing the water as to whether there was anything I could do about it. It was and remains the right thing to have done under the rather unusual and perverted circumstances confronting me. The decision to test the issue was not taken lightly. I expected a motion to disqualify me; however, I also expected an opportunity to present my defenses to such a motion which, although unusual, are substantial. Among other things, there has been a substantial waiver of privilege by Scientology's attacks on and defamation of the undersigned. The Aznaran case is not substantially related to my previous work for Scientology. Unfortunately, Judge Ideman acted without hearing any arguments or proof on the issues of waiver and substantial relationship.

21. In many respects this is a tempest in a teapot. In

addition to being seen with Gerald Armstrong, I filed an appearance in the Aznaran case. I sought an extension of time in which to respond to summary judgment motions first from opposing counsel and then from the court. I suggested to Mr. Quinn that they continue the summary judgment hearings until such time as the Aznarans' representation could be straightened out. Scientology declined that most reasonable suggestion. Accordingly, I filed motions to obtain extensions of time. Ultimately, the court revoked the substitution of attorney and reinstated Ford Greene as counsel of record. Presumably, Mr. Greene is responding to pending motions.

22. My appearance in the Aznaran case was so transitory that I was personally never in possession of the file. Under the circumstances, I never had an opportunity to do any work on the merits of the case. No discovery or trial preparation was done during my brief tenure as counsel of record.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on July 31, 1991, at Los Angeles, California.

JOSEPH A. YANNY

EXHIBIT C

HUB LAW OFFICES
Ford Greene, Esquire
California Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Plaintiffs
VICKI J. AZNARAN and
RICHARD N. AZNARAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTER CLAIM	No. CV-88-1786-JMI(Ex) **PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER ALLOWING PLAINTIFFS TO RESPOND TO ALL PENDING MOTIONS ON OR BEFORE AUGUST 26, 1991; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF FORD GREENE IN SUPPORT THEREOF**

Plaintiffs VICKI J. AZNARAN and RICHARD N. AZNARAN (hereinafter "Plaintiffs" or "Aznarans") hereby apply to this Court, ex parte, for relief in a number of regards all of which pertain to the pending motions that have been filed by defendants over the course of the past two months.

Plaintiffs base this Ex Parte Application on the fact that at the time said motions were filed, plaintiffs either were without counsel, with counsel who was subsequently disqualified and all papers filed by him stricken, or in the process of obtaining new

counsel.

The legal basis for this Ex Parte Application is Federal Rule of Civil Procedure 6 and Local Rule 7.3.2.

DATED: August 1, 1991

HUB LAW OFFICES

FORD GREENE
Attorney for Plaintiffs

DECLARATION OF FORD GREENE

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California, am admitted to practice before this court and am the attorney of record for Vicki J. Aznaran and Richard N. Aznaran, plaintiffs herein.

2. On June 7, 1991, I acceded to the request of plaintiffs and executed substitutions of attorney whereby both plaintiffs, *in pro per*, were substituted in my place and stead.

3. On July 1, 1991, plaintiffs jointly filed the substitutions which placed them in pro per, with additional substitutions whereby attorney Joseph A. Yanny became attorney of record.

4. On July 24, 1991, the Court vacated all of the substitutions, reinstated Ford Greene as attorney of record, and ordered that cause be shown by August 2 if plaintiffs desired to substitute counsel. Additionally, the Court ordered that all motions thereafter had to be noticed no later than August 19, 1991, and not exceed the 35 page limit.

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5. From June 19, through July 29, 1991 defendants served the following motions:

Srvc. Date	Hrg. Date	Nature of Motion	Pages of Memo	Pages of Exhibits
6/19/91	7/22/91	Summary Judgment Statute of Limitations	50 plus 22 page sep. statement	658
7/5/91	8/5/91	Summary Judgment First Amendment	98 plus 16 page sep. statement	926
7/29/91	8/19/91	Exclude expert's testimony	35	405
7/29/91	8/19/91	Sep. trial on issue of releases	16	114
7/29/91	8/19/91	To Dismiss	31 plus 6 page sup. brief	303
7/29/91	8/19/91	To Strike	11	15

6. Thus, while the Aznarans have been making efforts to find counsel possessing the requirements to try this extraordinary case, defendants have filed six motions the memoranda of which total 285 pages and the exhibits to which total 2,421 pages. This truly is an phenomenal amount of activity, particularly when the Aznarans' legal representation was, at best, unstable.

7. The first motion (for summary judgment on statute of limitations issues that is 72 pages in length) was filed shortly after the Aznarans were *in pro per*. The second motion (for summary judgment on First Amendment grounds that is 114 pages in length) was filed shortly after Yanny's interjection into the case. Without addressing the merits of any of the motions, the sheer <u>size</u> and <u>timing</u> thereof could not help but to stress plaintiffs' ability to prosecute their causes of action against defendants to the maximum.

8. On July 3, 1991, attorney Yanny on plaintiffs' behalf sought an <u>ex parte</u> order continuing the hearing on the statute of

limitations summary judgment motion for "at least sixty (60) days." Plaintiffs' opposition thereto was to be filed and served on or before July 8.

9. On July 9, 1991, attorney Yanny on plaintiffs' behalf sought another ex parte order continuing the hearing on the First Amendment summary judgment motion. Plaintiffs' opposition thereto was to be field and served on or before July 22.

10. I first became aware of the Court's Order reinstating me as attorney of record on July 26. At that time, I was aware that plaintiffs were in contact with Mr. Elstead with whom I understood plaintiffs to be in negotiations to act as counsel in this case. (The Court is respectfully requested to consider the Declarations of Ford Greene, John Clifton Elstead, Vicki J. Aznaran and Richard N. Aznaran filed in conjunction with the Association of Counsel filed concurrently herewith.)

11. On July 31, 1991, I met with Mr. Elstead and, with plaintiffs' concurrence, we determined not to substitute me out and Mr. Elstead in as attorney of record, but to associate him as trial counsel. On the same day I obtained the case file from Mr. Elstead. The file had been out of my possession ever since I had Federal Expressed it to Los Angeles on June 27. Also on that date I spoke with Tammy, the Court's clerk who advised me that the Court had stricken all papers filed by Joseph A. Yanny as being moot in light of the Court having vacated the Yanny substitution. Thus, the Court would not be ruling on the ex parte applications, submitted by Mr. Yanny, regarding defendants' two pending summary judgment motions. Regretably, at that point, the time within which plaintiffs' oppositions thereto should had been filed had expired.

C. 26

12. Prior to the exclusion of Yanny from the case, plaintiffs' ex parte requests for continuances of the hearing dates regarding the summary judgment motions were submitted in a timely fashion. With the vacation of the Yanny substitution having occurred after the date for opposition had passed, however, in consequence the Aznarans now stand in default.

13. With respect to the motions noticed for August 19, the oppositions thereto shall be served and filed on or before Monday, August 5, 1991.

14. There is no possible way that I can oppose the pending motions by August 5, not to mention the motions for summary judgment.

15. Based on the circumstances described above, plaintiffs respectfully request that they be allowed to and including August 26, 1991, to file their oppositions to all pending motions. While plaintiffs in all practicality would need more time to effectively oppose the motions, plaintiffs recognize that to ask for anything more would intrude way too far into the Court's capacity to consider the motions within the limit set by the September 16 Pre-Trial Conference and the October 15 Trial Date.

16. On this date I spoke with Laurie Bartilson, attorney for defendants, who advised me that defendants oppose the instant Ex Parte Application. Additionally, I left word with Julie, the secretary for attorney John Quinn, and advised her that I would be seeking relief through the instant application.

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Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on August 1, 1991, at San Anselmo, California

FORD GREENE

MEMORANDUM OF POINTS AND AUTHORITIES

As set forth above, extraordinary circumstances exist which have resulted in the Aznarans being in default as to two summary judgment motions, and at the threshhold of default concerning the remaining four motions. Thus, the Aznarans' failure to file papers in opposition to the two pending summary judgment motions "may be deemed by the Court [as] consent to the granting of the motion." Local Rule 7.9.

This Court has the authority pursuant to the Federal Rules or the Local Rules to enlarge time before or after the date by which opposition papers are to have been filed. F.R.Civ.P. 6, Local Rule 7.3.2.

Plaintiffs thus respectfully request, based upon the procedural history of this case over the course of the past two months, the Court grant their application and issue its order allowing plaintiffs to file opposing papers to all outstanding motion provded that such papers be filed and served on or before August 26, 1991.

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DATED: August 1, 1991

HUB LAW OFFICES

FORD GREENE
Attorney for Plaintiffs

EXHIBIT D

DECLARATION OF SAM BROWN

I, Sam Brown, hereby declare:

1. I am over the age of eighteen. I am a licensed private investigator in northern California. I run an investigation firm called Sam Brown and Associates. I have personal knowledge of the facts set forth below, except as stated to be on information and belief, and as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify thereto.

I ran a surveillance outside the law offices of Ford Greene at 711 Sir Francis Drake Boulevard, San Anselmo, California during the period from August 15 through August 21, 1991. I have been informed and believe that Greene is the attorney for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI (Ex) in Los Angeles Federal court.

3. During the course of this surveillance, a white male having long brown hair tied back in a pony tail, was observed entering and leaving the Greene law offices each day from the 15th through the 21st. This man spent most of the day at the offices. He was also observed bringing in boxes from Kinko's copy center.

4. This individual was videotaped entering and leaving the building and standing in front of it on

several different days. Some portions of the video have been printed as still photographs and are attached hereto as exhibit A.

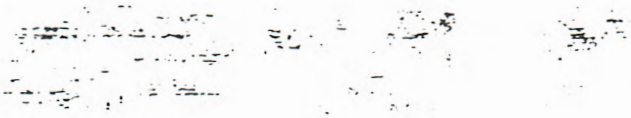
5. I was informed by the law firm which represents some of the defendants in the Aznaran case that the man in these photographs is an individual known as Gerald Armstrong.

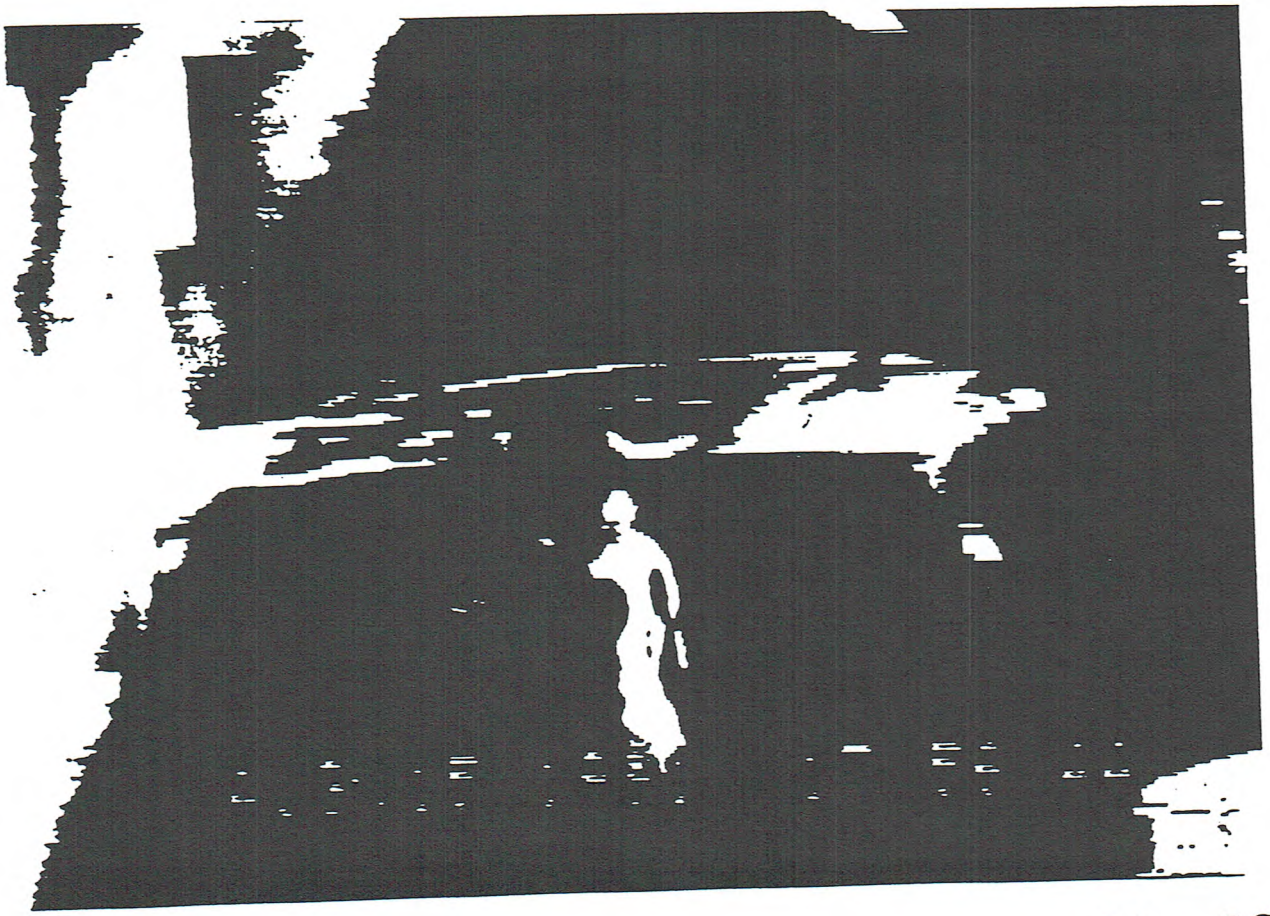
I declare under penalty of perjury that the foregoing is true and correct.

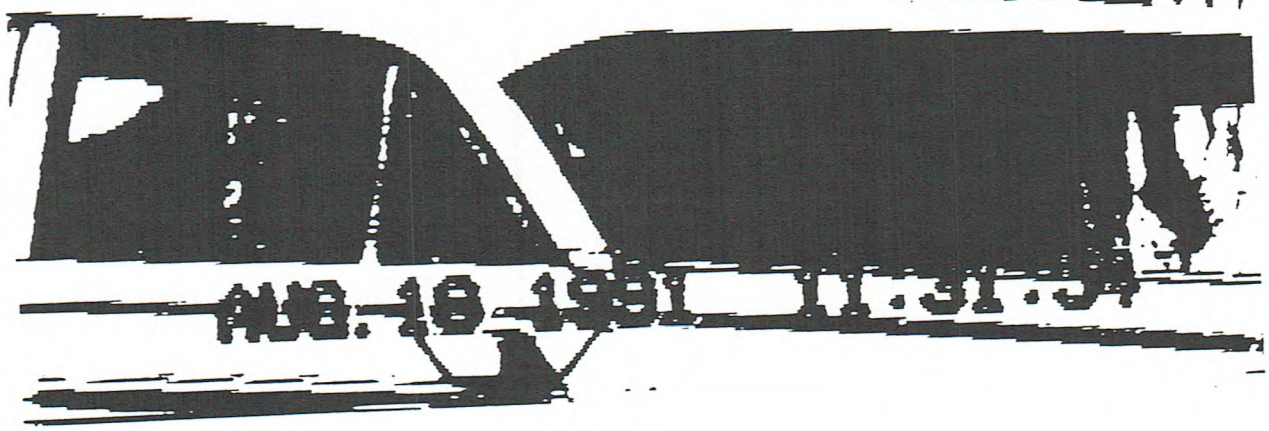
Executed at San Francisco, California the 26th day of August 1991.

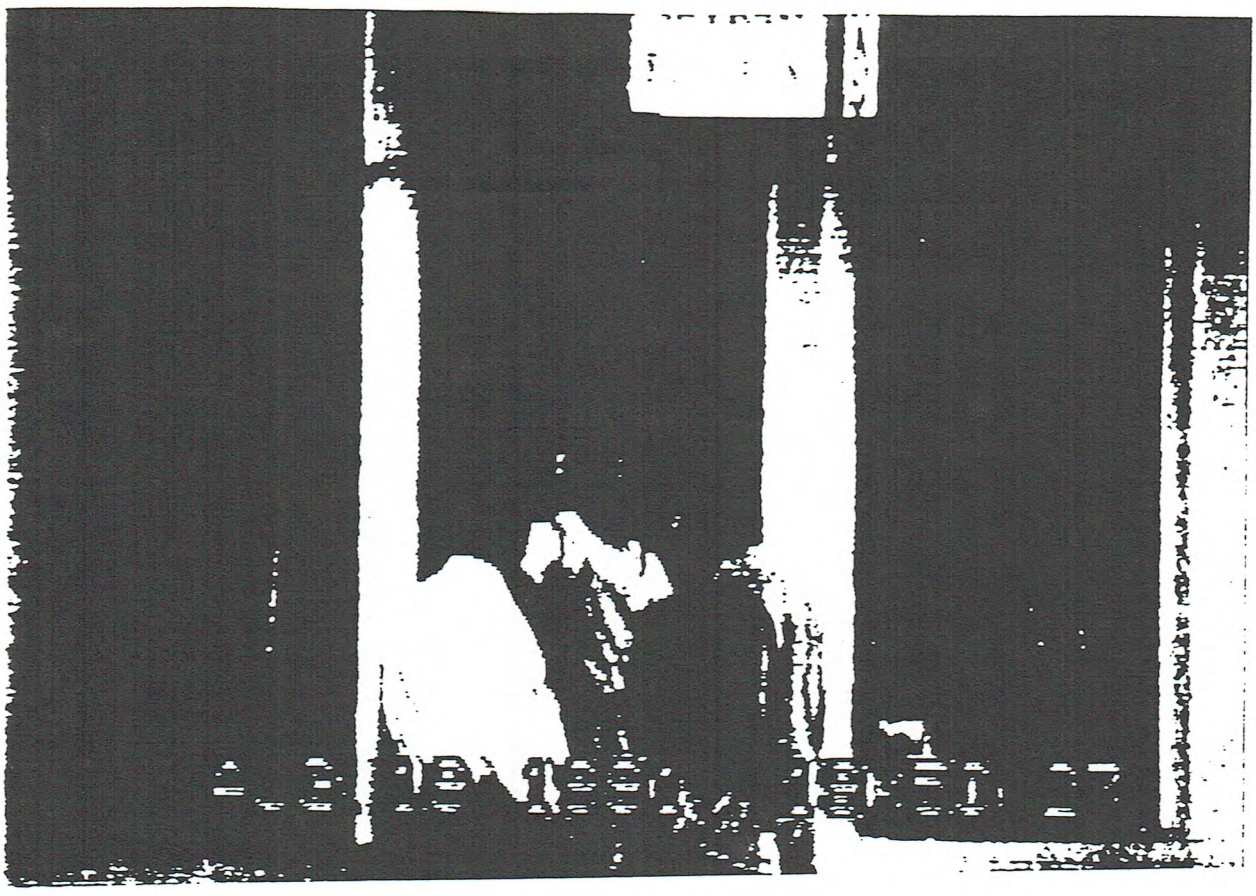
Sam Brown

SAM BROWN







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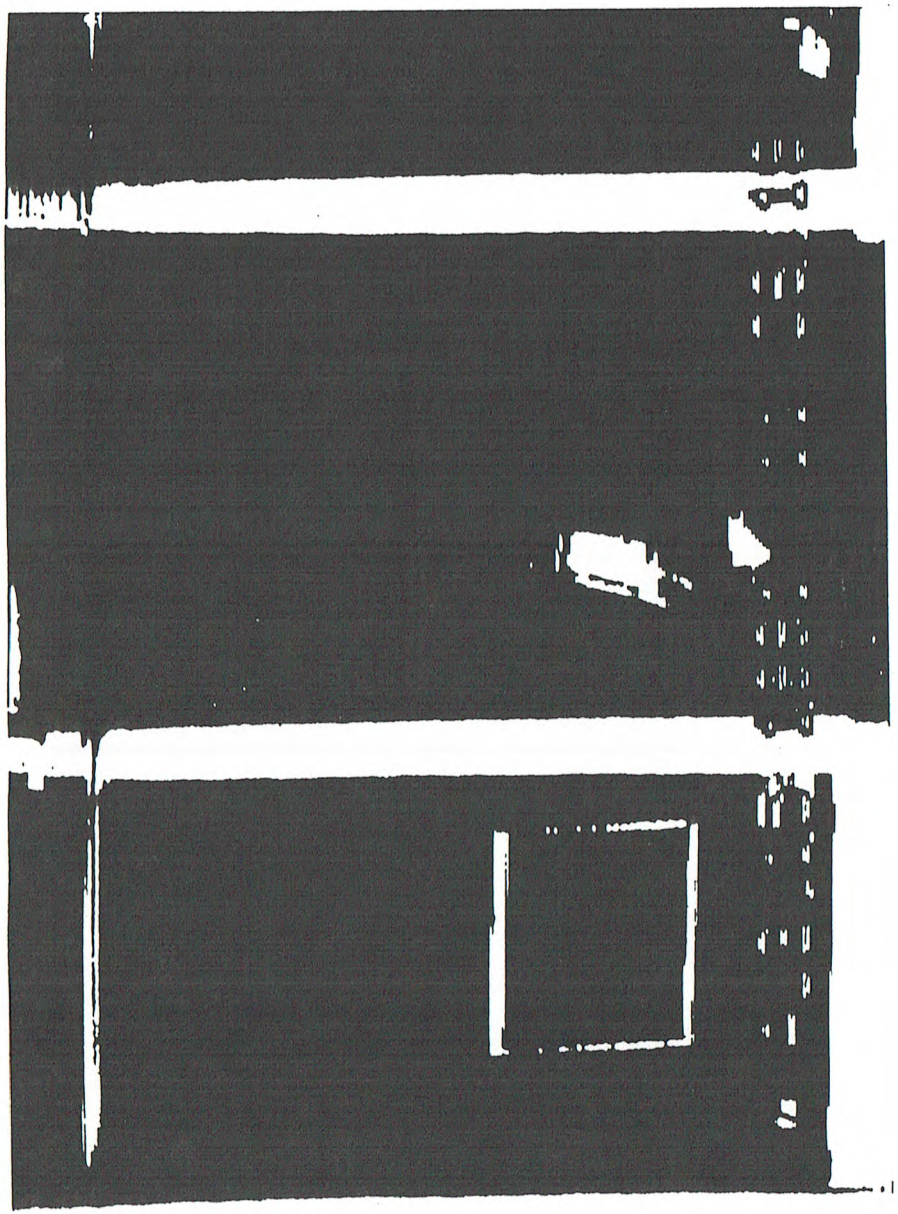

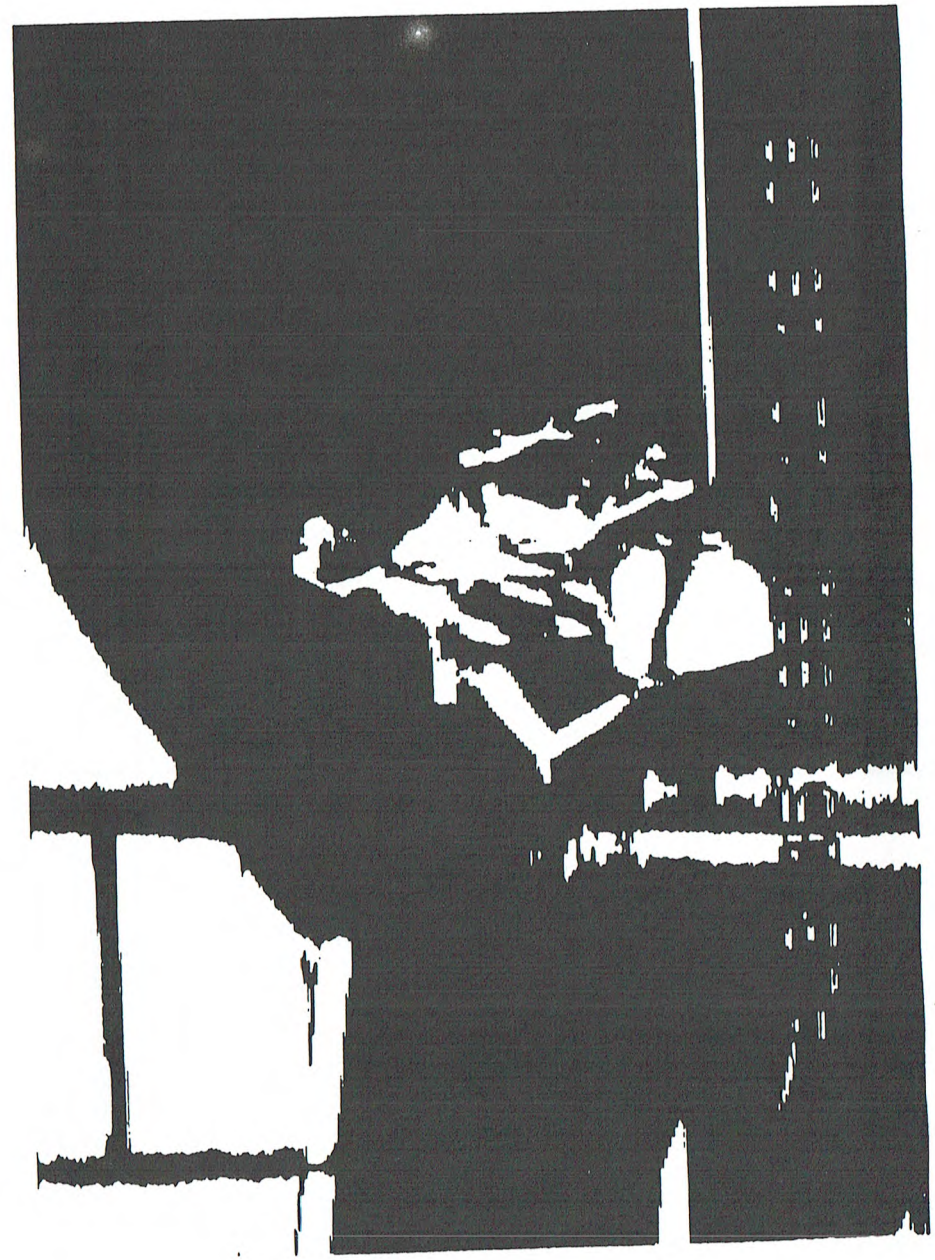

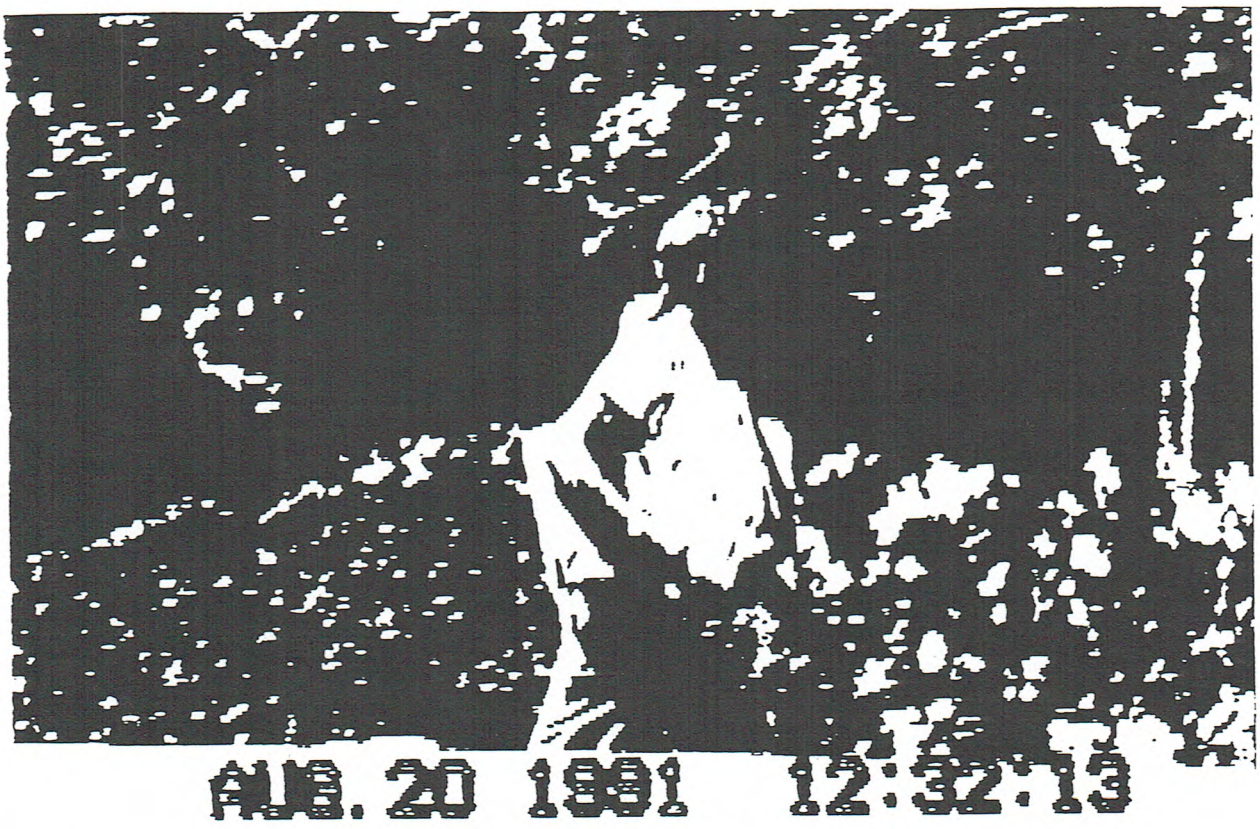
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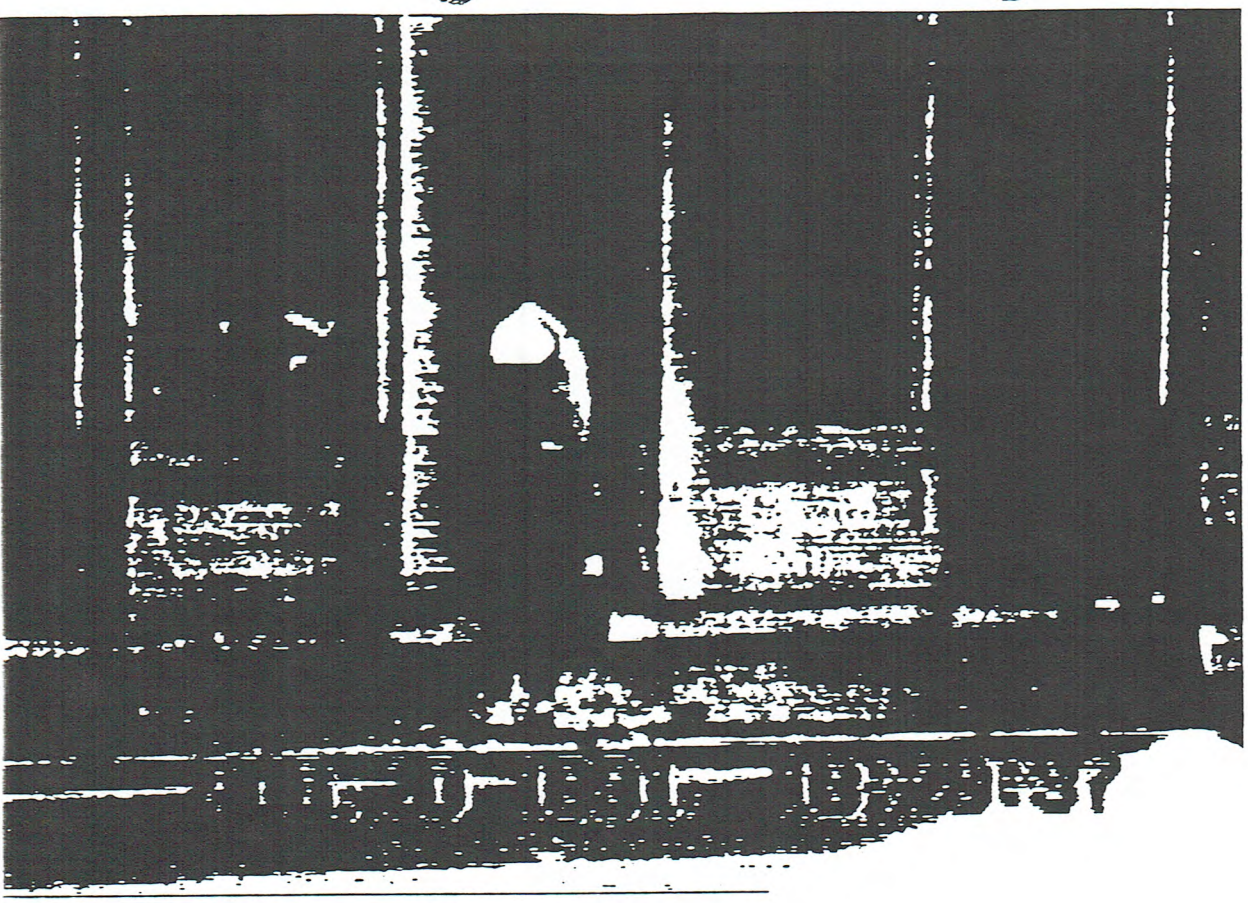

DECLARATION OF LYNN R. FARNY

I, Lynn R. Farny, do declare:

1. I am over 18 years of age and make this declaration of my own personal knowledge and for those matters stated upon information and belief, I believe them to be true and accurate. If called as a witness to testify as to the matters herein, I could and would do so competently.

2. I am corporate Secretary of the Church of Scientology International ("CSI"), a California religious corporation.

3. I have reviewed the photographs which are attached to the declarations of Sam Brown and Thorn Smith, Exhibits D and I to the Supplemental Memorandum in Support of Motion to Dismiss the Complaint. I recognize the individual in the photographs attached to the Smith declaration as John Koresko and the individual in the photographs attached to the Brown declaration as Gerald Armstrong.

4. I am well familiar with Gerald Armstrong, as I have worked in the legal department of CSI since 1984, and prior to that in the legal department of Church of Scientology of California ("CSC"). I have actively followed the events occurring during that time in lawsuit against Gerald Armstrong by CSC regarding his theft of private documents belonging to the Founder of the Scientology religion.

5. I am also well familiar with John Koresko, who was office manager and later a paralegal for Joseph A. Yanny, CSI's former attorney, during the time that Yanny represented

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CSI and afterwards, when CSI and CSC sued Yanny for his breaches of fiduciary duties.

6. That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in November 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations against the Church leadership:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.
>
> RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --
>
> ARMSTRONG: Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have

to allege it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Los Angeles, California the 26th day of August 1991.

LYNN R. FARNY

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized that Armstrong was a person who has been a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. In addition, in a case pending in Los Angeles Superior Court, Religious Technology Center, et al. v. Yanny, Case No. BC 033035. Armstrong and Joseph Yanny have both filed declarations under penalty of perjury that Armstrong was hired by Yanny as a paralegal to work on this case. (Ex. B, Declaration of Joseph A Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4). Even though Yanny protested its issuance, partially on the ground that Armstrong was his paralegal in this case (Ex. G, Transcript of August 6, 1991, at 25), Yanny was preliminarily

enjoined in that case from directly or indirectly acting as counsel against defendants on behalf of either the Aznarans or Gerald Armstrong.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this 7th day of August at Los Angeles, California.

LAURIE J. BARTILSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RAYMOND CARDENAS, JUDGE

RELIGIOUS TECHNOLOGY CENTER, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION; CHURCH OF SCIENTOLOGY INTERNATIONAL, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION; AND CHURCH OF SCIENTOLOGY OF CALIFORNIA, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION,	)	
PLAINTIFFS,	)	
VS.	)	SUPERIOR COURT CASE NO. BC 033035
JOSEPH A. YANNY, AN INDIVIDUAL; JOSEPH A. YANNY, A PROFESSIONAL LAW CORPORATION; AND DOES 1 THROUGH 25, INCLUSIVE,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT

AUGUST 6, 1991

APPEARANCES:

(AS NOTED ON NEXT PAGE.)

COPY

LINDA STALEY, CSR NO. 3359
OFFICIAL REPORTER

APPEARANCES:

FOR PLAINTIFF CHURCH OF SCIENTOLOGY:	QUINN, KULLY & MORROW BY: JOHN J. QUINN 520 SOUTH GRAND AVENUE 8TH FLOOR LOS ANGELES, CALIFORNIA (213) 622-0300
FOR PLAINTIFF RELIGIOUS TECHNOLOGY CENTER:	WILLIAM T. DRESCHER 23679 CALABASAS ROAD SUITE 338 CALABASAS, CALIFORNIA 91302 (818) 591-0039
FOR DEFENDANT JOSEPH A. YANNY, INDIVIDUALLY:	CUMMINGS & WHITE BY: BARRY VAN SICKLE 865 SOUTH FIGUEROA STREET 24TH FLOOR LOS ANGELES, CALIFORNIA 90017 (213) 614-1000
FOR DEFENDANT JOSEPH A. YANNY, A PROFESSIONAL CORPORATION:	JOSEPH A. YANNY 1925 CENTURY PARK EAST SUITE 1260 LOS ANGELES, CALIFORNIA 90067 (213) 551-2966

LOS ANGELES, CALIFORNIA TUESDAY, 8-6-91 # 9:32 A.M.
DEPT. 41 HON. RAYMOND CARDENAS, JUDGE
APPEARANCES: (AS NOTED ON TITLE PAGE.)

- - O - -

THE COURT: RELIGIOUS TECHNOLOGY CENTER VERSUS YANNY.

THE MATTER IS HERE FOR HEARING ON THE QUESTION OF THE PRELIMINARY INJUNCTION.

THE COURT HAS HERETOFORE SIGNED A TEMPORARY RESTRAINING ORDER, JULY 31ST, AND AT THIS TIME, I WILL HAVE THE PARTIES IDENTIFY THEMSELVES AND THEIR APPEARANCE.

MR. DRESCHER: GOOD MORNING, YOUR HONOR.

WILLIAM DRESCHER ON BEHALF OF THE PLAINTIFF RELIGIOUS TECHNOLOGY CORPORATION.

MR. QUINN: JOHN QUINN ON BEHALF OF CHURCH OF SCIENTOLOGY INTERNATIONAL.

MR. VAN SICKLE: BARRY VAN SICKLE ON BEHALF OF JOSEPH A. YANNY, AN INDIVIDUAL.

MR. YANNY: AND JOSEPH A. YANNY ON BEHALF OF JOSEPH A. YANNY, A PROFESSIONAL CORPORATION, YOUR HONOR.

THE COURT: THE COURT HAS BEFORE IT A QUESTION OF WHAT, IF ANY -- WHETHER IT WILL ISSUE A PRELIMINARY INJUNCTION OR NOT IN LIGHT OF CASE NO. BC 033035.

THE COURT HAS ISSUED THE TRO AS A STOPGAP MEASURE. I'LL TELL YOU AT THE OUTSET THAT I THINK THAT I'VE SIGNED IT FOR A TRO, BUT THAT IT'S TOO BROAD IN

NATURE, SO WE GET BACK TO THE FIRST ISSUE, HOWEVER, IS WHETHER OR NOT ANY PRELIMINARY INJUNCTION SHOULD ISSUE.

TWO THINGS OCCUR HERE. THERE ARE TWO PARTIES, NAMELY, THE QUESTION OF MR. YANNY REPRESENTING THE AZNARANS AND MR. YANNY REPRESENTING MR. ARMSTRONG.

I MIGHT POINT OUT THAT IN YANNY I, AS IT'S BEEN REFERRED TO -- AND YOU ALL KNOW THAT I'M REFERRING TO THE OTHER CASE THAT WAS PRESENTED HERE IN COURT -- I'M NOT GOING TO REPEAT IT, I'LL JUST REFER TO IT AS YANNY I -- YANNY I WAS, AMONG OTHER THINGS, A REQUEST BY PLAINTIFFS TO PREVENT MR. YANNY FROM DISCLOSING SECRETS OR CONFIDENCES THAT HE RECEIVED TO OTHERS, AND THE COURT RULED THAT THE PLAINTIFF DID NOT PROVE ITS CASE, THAT IS, TO IDENTIFY THE SECRETS OR THE CONFIDENCES THAT WERE BEING DISCLOSED, AND THE COURT RULED THAT IT DID NOT, MEANING THE PLAINTIFFS, DID NOT PROVE DAMAGE WITH RESPECT TO THAT.

THE PICTURE IS NOW CHANGED, AND PART OF THE COURT'S OPINION IN YANNY I, THE COURT ALLUDED TO THE FACT THAT MR. YANNY HAD SHOWN A PROPENSITY TO PERHAPS BE ON THE BORDERLINE OF A BREACH OF A DUTY TO A FORMER CLIENT IN THE OTHER CASE.

NOW, WHAT HAS TRANSPIRED IS THAT, FACTUALLY, MR. YANNY REPRESENTED THE CHURCH, OR THE PLAINTIFFS, FOR A PERIOD OF YEARS, AND THAT'S ADMITTED, AND AT THAT TIME, MS. AZNARAN --

AND I FORGET HER HUSBAND'S NAME.

MR. YANNY: RICHARD.

THE COURT: -- RICHARD, WERE PART OF THE CHURCH, OR

THE PLAINTIFFS, AND SO NOW WE HAVE A SITUATION WHERE MR. YANNY HAS ACTUALLY APPEARED FOR THE AZNARANS IN THE FEDERAL COURT AGAINST THE PLAINTIFFS, WHICH BRINGS INTO PLAY WHETHER OR NOT -- WHETHER THERE IS A REMEDY WHERE A LAWYER IS REPRESENTING SOMEONE AGAINST A FORMER CLIENT, AND THE QUESTION IS WHETHER OR NOT THAT'S IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT, RULE 33-310(D), AND ALSO RULES OF PROFESSIONAL CONDUCT 6068, SUBDIVISIOIN (E).

THE PICTURE IS QUITE DIFFERENT THAN IN THE FORMER CASE, BECAUSE, HERE, WE HAVE NO NEED FOR THE PLAINTIFFS TO POINT OUT WHAT SPECIFIC SECRETS OR CONFIDENCES ARE BEING DISCLOSED, BUT RATHER, IT'S PRESUMED THAT THERE'S AN ADVERSE REPRESENTATION, AND THE ONLY ISSUE THAT WE HAVE, AT LEAST RIGHT NOW, WOULD BE WHETHER THERE'S A SUBSTANTIAL RELATIONSHIP BETWEEN WHAT YANNY DID, OR FOR THE PLAINTIFFS, WHAT INTERESTS HE REPRESENTED, VERSUS WHAT HIS INTERESTS ARE NOW AND WHAT INTERESTS ARE BEING REPRESENTED IN THE AZNARAN CASE.

THE ARMSTRONG CASE IS SOMEWHAT DIFFERENT, ALTHOUGH I THINK IT'S UNDISPUTED THAT YANNY REPRESENTED THE PLAINTIFFS AGAINST ARMSTRONG AT SOMETIME -- AND MAYBE THAT'S A WRONG ASSUMPTION -- MR. YANNY'S SHAKING HIS HEAD -- BUT MR. YANNY, I BELIEVE, REPRESENTED THE PLAINTIFFS IN MANY RESPECTS, AND IN PARTICULAR, I THINK BROUGHT OR WAS IN CHARGE OF LEGAL ACTION PRESERVING THE COPYRIGHT INTERESTS OF THE PLAINTIFFS AND OTHER INTERESTS.

SO THE QUESTION HERE IS WHETHER OR NOT A RESTRAINING ORDER SHOULD BE MADE TO PRECLUDE MR. YANNY FROM

REPRESENTING ARMSTRONG, PRESUMPTIVELY, IF HE IS. THAT'S A QUESTION, I THINK, MR. YANNY DENIES, BUT EVEN IF HE WAS, IS THERE A MATERIAL OR SUBSTANTIAL RELATIONSHIP BETWEEN THE INTERESTS THAT MR. YANNY HAD IN PROTECTING FOR THE PLAINTIFFS AND THOSE THAT HE PURSUES OR IS ALLEGED TO BE PURSUING FOR MR. ARMSTRONG?

IT'S A LONG-WINDED WAY OF SUMMARIZING WHERE WE'RE AT, AND TO BEGIN WITH, MR. VAN SICKLE: IN LIGHT OF MR. YANNY'S ADMITTED REPRESENTATION OF AZNARANS IN FEDERAL COURT, WHY ISN'T THERE A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT THAT SHOULD BE RESTRAINED?

MR. VAN SICKLE: WELL, SEVERAL REASONS.

ONE, AS THE COURT HAS RECOGNIZED, IF HE REPRESENTS THE AZNARANS IN FEDERAL COURT, THEN THE APPROPRIATE REMEDY IS FOR THEM TO GO IN AND DISQUALIFY THEM -- MR. YANNY.

NOW, DISQUALIFICATION IS NOT PUNITIVE IN NATURE, SO, THEREFORE, WHEN YOU'RE INVOLVED IN A DISQUALIFICATION, THE BURDEN'S A LITTLE BIT DIFFERENT. THE PRESUMPTIONS ARE DIFFERENT. THE PRESUMPTION OF, SAY, DISCLOSING SECRETS, VARIOUS PRESUMPTIONS WORK IN THEIR FAVOR IN A DISQUALIFICATION MOTION.

BUT THOSE SAME PRESUMPTIONS DO NOT OPERATE IN A PRELIMINARY INJUNCTION, AND THAT MAKES SENSE. BECAUSE WHEN YOU'RE GOING INTO COURT AND ASKING FOR DISQUALIFICATION ON A CASE-BY-CASE BASIS, YOU'RE GOING THE WAY YOU'RE SUPPOSED TO GO.

YOU COME INTO COURT ON A PRELIMINARY

CETERA, NOTHING TO DO WITH ADVERSE REPRESENTATION OF SCIENTOLOGY. THEY DO NOT HAVE THE RIGHT --

THE COURT: MR. YANNY, I STATED THAT THE TRO WAS TOO BROAD IN THAT IT IS THE COURT'S INTENT NOT TO PRECLUDE ASSOCIATION, DISCUSSION, AND SO FORTH, AND I THOUGHT THAT WOULD SEND THE MESSAGE THAT IF THERE WAS AN ORDER, IT WOULD BE A LOT MORE NARROW THAN THE TRO THAT WAS SIGNED.

MR. YANNY: YOUR HONOR, BUT BASED ON THE STRENGTH OF WHAT THEY'VE SHOWN; NOTHING?

AND WHAT YOU'RE GOING TO DO BY GIVING THESE, THE MOST LITIGIOUS PEOPLE IN THE CITY OF LOS ANGELES, MAYBE THE STATE OF CALIFORNIA, AND MAYBE THE UNITED STATES, YOU'RE GOING TO GIVE THEM AN ORDER BY WHICH THEY ARE THEN GOING TO HARASS EVERY ONE OF MY EMPLOYEES LIKE YOU SAW THEM DO BEFORE, EVERY ONE OF MY CLIENTS, LIKE YOU SAW THEM DO BEFORE.

OKAY. AND THAT, BASED ON THE STRENGTH OF WHAT THEY SHOWED, YOU KNOW, IT IS -- I HATE TO SAY THIS -- THAT IS INEQUITABLE -- THAT IS INEQUITABLE -- AND ALL OF THIS BECAUSE I DID ONE THING; I HIRED GERRY ARMSTRONG AS A PARALEGAL TO HELP ME ON THE AZNARAN CASE?

THE COURT: NO. ALL BECAUSE --

MR. YANNY: I TOLD HIM ABOUT COPYRIGHT NOTICES AND I MADE AN APPEARANCE IN A FEDERAL CASE AND THAT THE JUDGE DISQUALIFIED ME.

I DON'T THINK AN ORDER IS APPROPRIATE. THIS CASE SHOULD HAVE BEEN THROWN OUT WHEN YOU SAW THE COMPLAINT.

EXHIBIT A

Declaration of Gerald Armstrong

I, Gerald Armstrong, declare:

1. I have been advised by attorney Joseph A. Yanny that he has been sued by one or more Scientology entities, hereinafter referred to as "the organization," for inducing me to breach a settlement agreement I entered into with the organization in December 1986. I am making this declaration to show that this allegation is in every respect untrue.

2. I received a telephone call from Mr. Yanny to my answering machine on or about July 10, 1991. He left a message which simply said, "I need your help." I

called him back at which time he reiterated his request for my help and explained that because of organizational machinations (which have been detailed in other declarations by other parties), Rick and Vicki Azarian, plaintiffs and counter-defendants against the organization had been induced to fire their attorney, Ford Greene, and that Mr. Janny had come into the case to ensure they had legal representation. Mr. Janny also expressed during this conversation some personal concerns, which will remain private and confidential

between Mr. Yanny and me.

3. I told Mr. Yanny at that time that I would help and that I would travel to Los Angeles on July 12. I I asked him for five hundred dollars to cover my expenses, and told him he could consider it as purchase of stock in the Gerald Armstrong Corporation (TGAC). I also counseled Mr. Yanny at that time regarding his personal spiritual difficulties. (TGAC is a California Corporation in which, although it bears my name and I am its active officer,

I own no stock.)

4. I did travel to Los Angeles, did stay at Mr. Yanny's home, did work in his office on July 15 and 16, and did write and execute a declaration on July 16 giving my knowledge of the effect of the December 1986 group settlement agreements on the ability of the Azraaree and other individuals victimized by the organization to obtain proper legal representation. I also discussed with Mr. Yanny literary and

artistic matters, areas of the law, as a copyright and trademark attorney, in which he has expertise. The majority of my time with Mr. Yanny concerned spiritual matters, an area in which I have expertise.

5. I refer this Court to my declarations of March 15, 1990 and December 25, 1990, and the exhibits thereto. These declarations detail the circumstances at the time of the December 1986 settlement and the many instances subsequently

when I was attacked
or threatened by the
organization in violation
of the settlement agreements.
These declarations make it
very clear that I consider
I have a right to counter
the organization's attacks,
to speak out against
its policy of "fair game"
and assaults on the
basic rights of individuals,
and to assist those
whom I would defend
or for protection against
the organization's legal
and extra-legal might
and antisocial acts.
It is therefore the Sy-

anizatori itself which induced me - if it was induced by any person agency to do anything which the organization might consider a breach of the settlement agreement.

6. But more than a desire to protect myself or right the organization's unjust acts towards me, however, & helped Mr. Yanny for the single reason that he asked. I will do the same for anyone. The organization is aware of this fact because it received my letter of

(8)

June 21, 1991, a copy of which will accompany this declaration as Exhibit 1, and acknowledged the letter's receipt in their letter of July 3, 1991, a copy of which will accompany this declaration as Exhibit 2. It is not only the right of all men to respond to requests for help, it is our essence. If I was induced, therefore, to help Mr. Yanny, or anyone else, it was our Creator Who induced me. Mr. Yanny, unlike the organization, was not aware of my dedication to helping my fellow humans, did not know of my June

(9)

21, 1991 letter, so acted in innocence.

7. I do not ask for or expect a fee for my help, although generally & do not refuse whatever is given me. I know that I am sustained completely by the Great Coordinator Who sends to me whomever He wants me to help. I therefore cannot be induced by money or whatever anyone can offer me.

I declare under the pain and penalty of perjury under the laws of the State of California that the foregoing is true and

(10)

correct.

Executed this 19th day of July at New York, New York.

G.

Gerald Armstrong

DECLARATION OF THORN SMITH

I, Thorn Smith, hereby declare:

1. I am over the age of eighteen. I am a licensed attorney in the state of California. I have personal knowledge of the facts set forth below, except as stated on information and belief, and as to those I believe them to be true. If called upon to do so, I could and would competently testify thereto.

2. On Saturday, August 3, 1991, I conducted a surveillance at the law offices of Ford Greene, the attorney for the plaintiffs in a federal case pending in Los Angeles, Aznaran v. Church of Scientology of California Case No. 88-1786 JMI (Ex). The address of his office is 711 Sir Francis Drake Boulevard, San Anselmo, California, which is a storefront in a two-story building.

3. During the course of that morning, I observed a white male, who was driving a grey Cadillac, having a California tag reading "I MENSA," outside those law offices.

4. The man I saw took various boxes from the trunk of his car and brought them into Ford Greene's building, along with another unidentified white male.

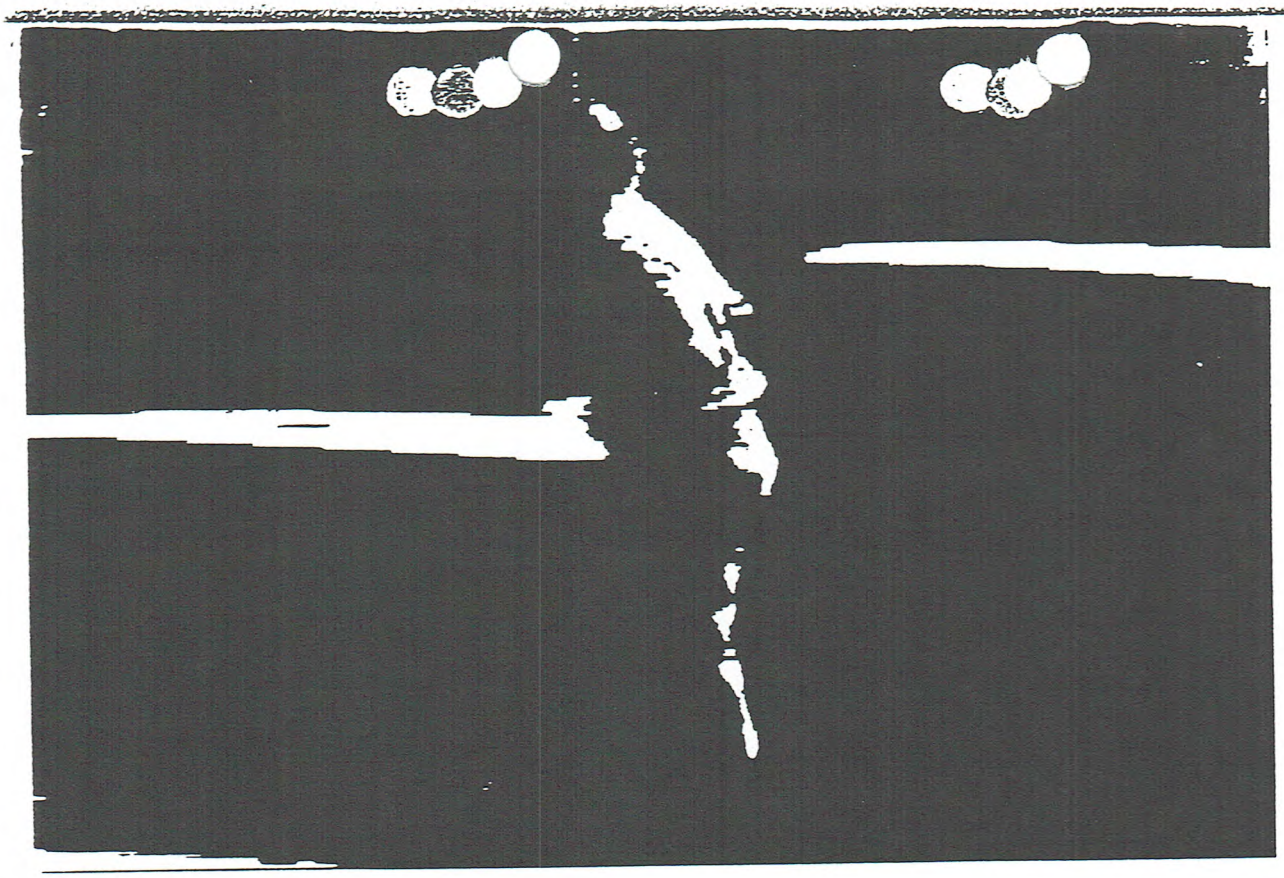
5. I have subsequently learned from counsel for the defendants in the Aznaran case that their client identified the owner of the grey Cadillac as being John Koresko.

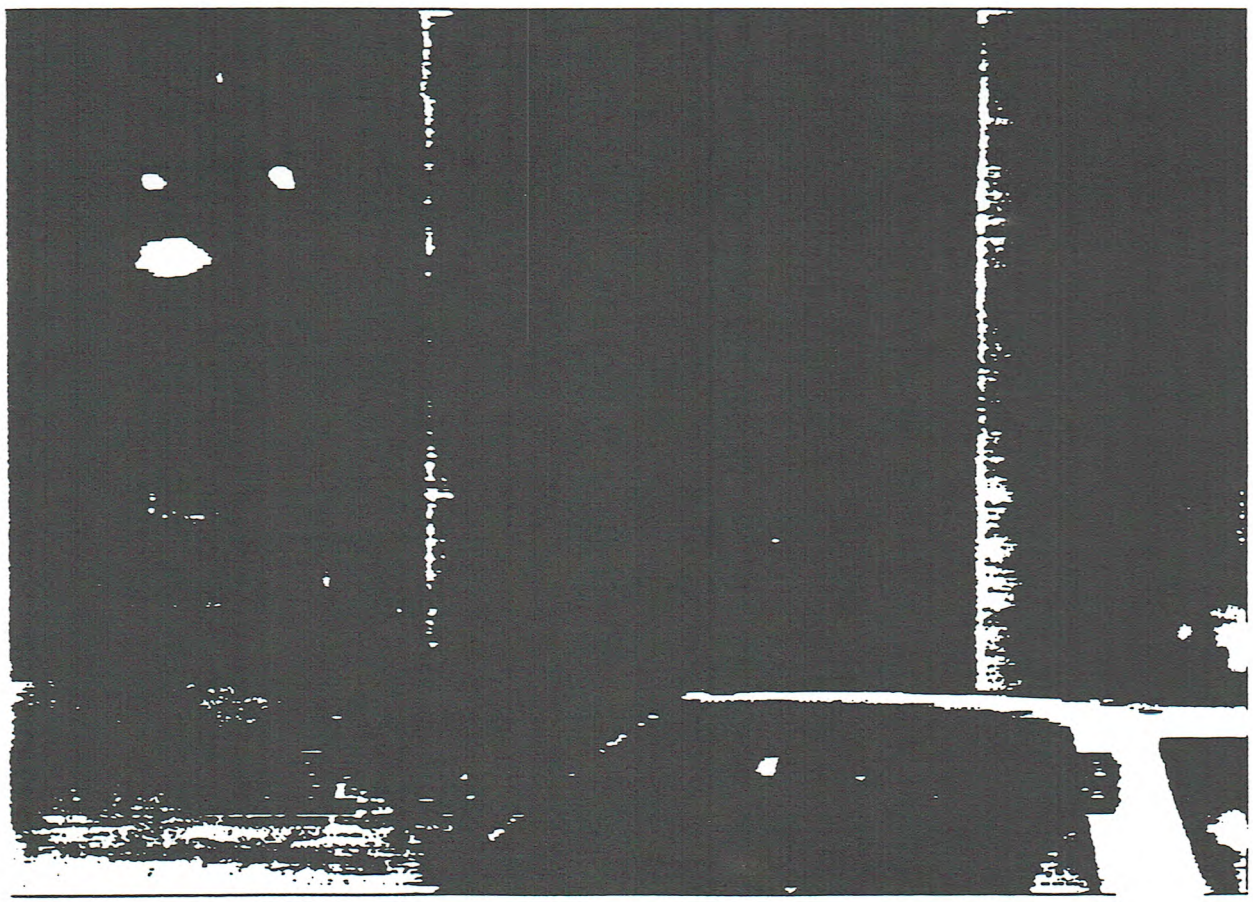
I declare under penalty of perjury that the foregoing is true and correct.

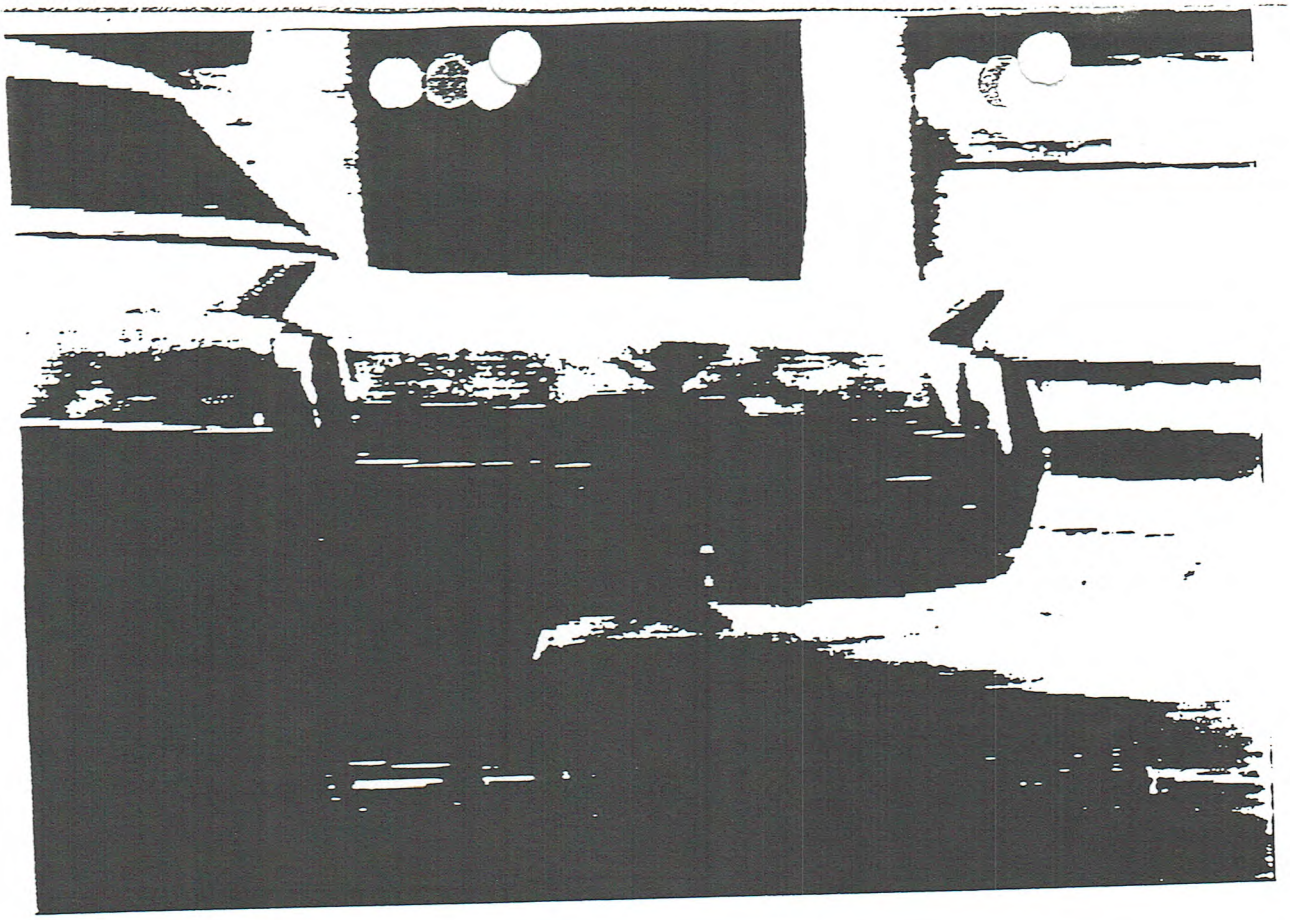
Executed at San Francisco, California the 26th day of August 1991.

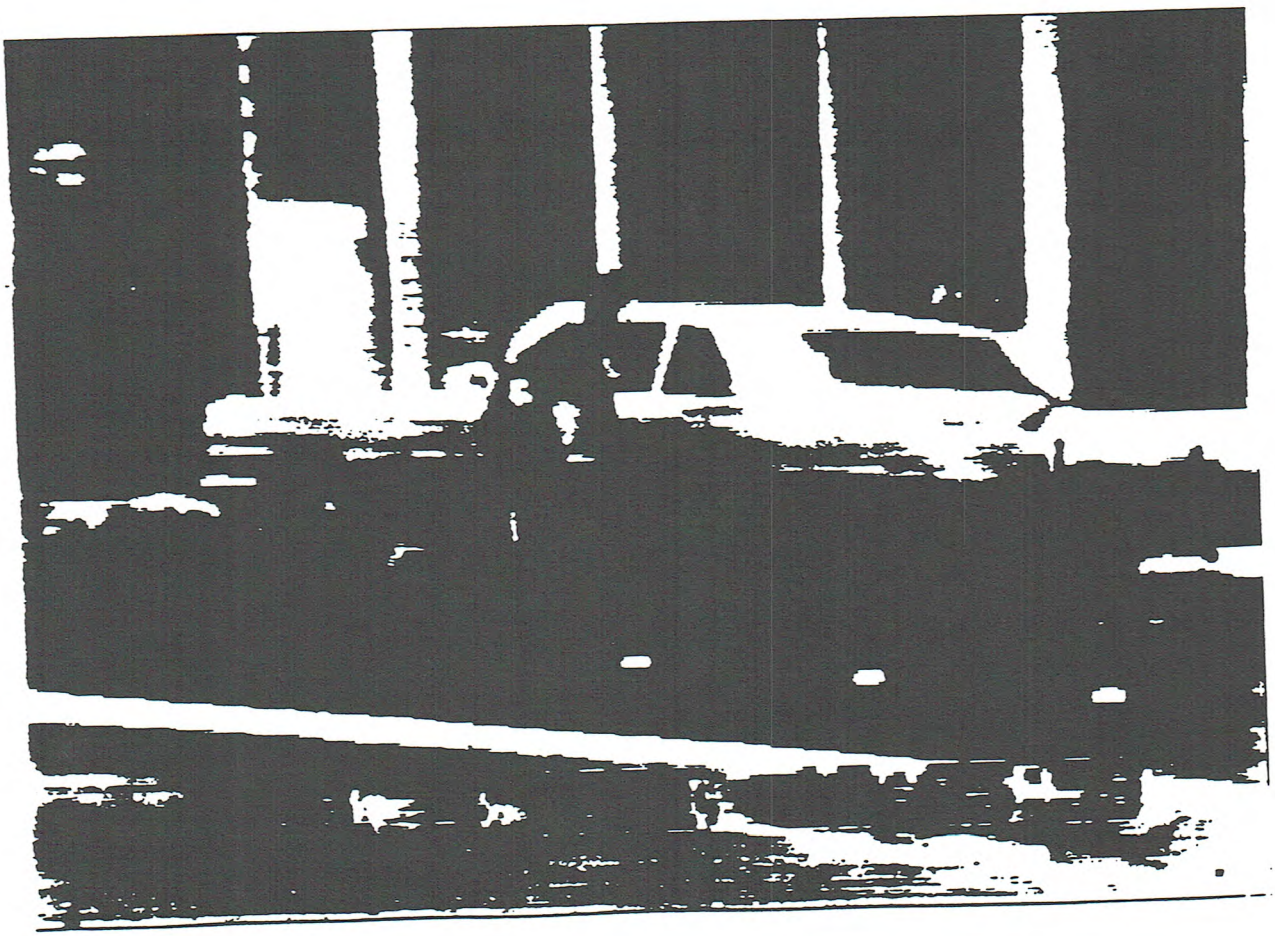
THORN SMITH

BIT A









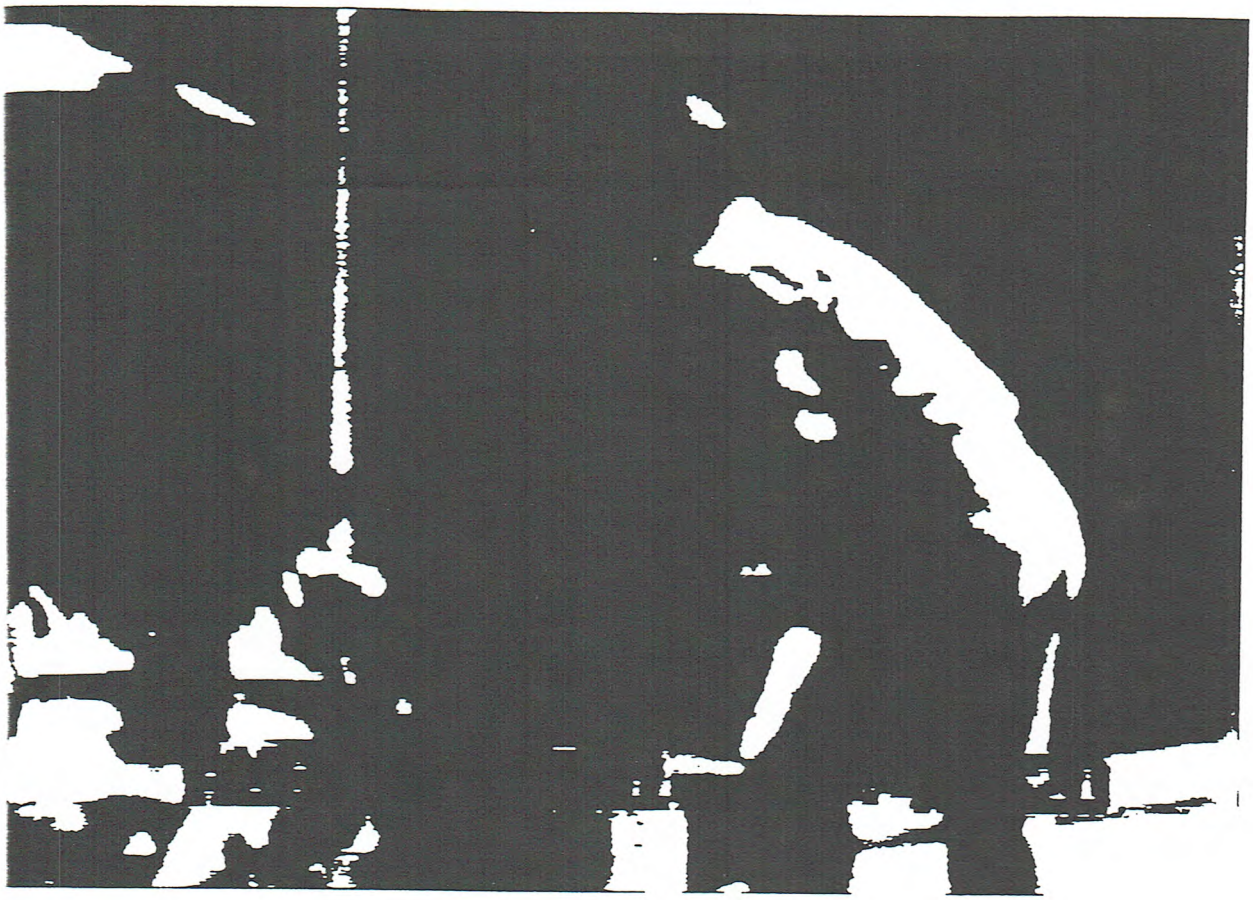


EXHIBIT J

DECLARATION OF EDWARD AUSTIN

I, Edward Austin, hereby declare:

1. I am over the age of eighteen. I am a licensed private investigator in northern California. I have personal knowledge of the facts set forth below, except as stated on information and belief, and as to those I believe them to be true. If called upon to do so, I could and would competently testify thereto.

2. On Saturday, August 3, 1991, I conducted a surveillance at the law offices of Ford Greene, the attorney for the plaintiffs in a federal case pending in Los Angeles, Aznaran v. Church of Scientology of California, Case No. CV 88-1786 JMI (Ex). The address of his office is 711 Sir Francis Drake Boulevard, San Anselmo, California, which is a storefront in a two-story building.

3. During the course of that day, I observed an old, grey Cadillac, having a California tag reading "I MENSA," pull up outside of the office at 5:14 p.m. I saw a dark haired man get out of the car and go into Ford Greene's office. The Cadillac remained parked outside Mr. Greene's office until 10:25 p.m.

4. I have subsequently been informed by counsel for the defendants in the Aznaran litigation that their client identified the grey Cadillac as belonging to John Koresko.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Marin County, California the 26 day of August 1991.

EDWARD AUSTIN

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

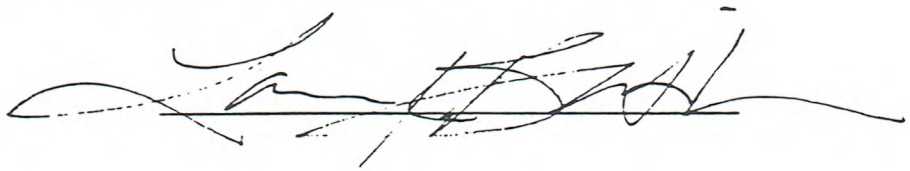
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 26, 1991, I caused to be served the foregoing document described as SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; DECLARATIONS OF SAM BROWN, THORN SMITH, EDWARD AUSTIN, LYNN R. FARNY AND LAURIE J. BARTILSON on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.



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8/26/91

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTERCLAIMS.	CASE No. CV 88-1786 JMI(Ex) REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS DATE: September 9, 1991 TIME: 10:00 a.m. COURTROOM: Hon. James M. Ideman

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PRELIMINARY STATEMENT

It is time for the Court to put an end to the expensive, time-consuming force that this case is.

Defendants have filed a motion for summary judgment which sets forth ample evidence that everyone of plaintiffs Vicki and Richard Aznaran's alleged claims for relief is barred by the applicable statute of limitations. In response, the Aznarans concede that Vicki's false imprisonment claim is time-barred because she left the condition claimed to have been the wrongful confinement on March 31, 1987, more than one year before this suit was filed. [Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); see Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4]. The Aznarans do not even attempt to controvert the undisputed facts that demonstrate that the events that give rise to their other claims occurred well outside the limitations period [Def. Mem. at 16-19 and Uncontroverted Facts Nos. 5-7 (intentional and negligent infliction of emotional distress); Def. Mem. at 21-24 and Uncontroverted Facts Nos 7-9 (loss of consortium); Def. Mem at 27-35 and Uncontroverted Facts Nos. 10, 12-17 (fraud); Def. Mem. at 37-38 and Uncontroverted Fact No. 6 (constructive fraud); Def. Mem. at 44-46 and Uncontroverted Fact No. 10 (breach of contract); Def. Mem. at 44-46 and Uncontroverted Facts Nos. 10, 22 (restitution); Def. Mem. at 46-49 and Uncontroverted Fact No. 23 (invasion of privacy); Def. Mem. at 49-50 and Uncontroverted Fact No. 24 (statutory minimum wage claim).]

With all of that established and uncontroverted, summary

judgment on all of the Aznarans' claims is mandated, and this 3 1/2 year drain on everyone's resources will reach its proper conclusion: judgment for all defendants on all counts.

Confronted with that insurmountable hurdle, the Aznarans, their present counsel, and Joseph A. Yanny, defendants' former counsel and the Aznarans' de facto counsel, responded predictably. They once again change and contradict their earlier sworn testimony to "support" never-before alleged legal theories conjured up to meet the exigencies of the moment.

On February 20, 1991, defendants filed a motion asking the Court to order the Aznarans and their counsel not to indulge further in their habitual changing of their sworn versions of the facts and the legal theories of their case. That motion was necessitated by the Aznarans continuously supplying declarations that were at odds with their earlier sworn testimony and because their counsel changed their legal theories each time he was called upon to articulate them, to the point that even their legal theories were in conflict. That motion remains under submission. Now, faced with meritorious motions for summary judgment, the Aznarans have once again changed the facts, contradicted their earlier testimony, created an entirely new story concerning their case and again redefined their theories.

The Aznarans' and their counsel's repositioning of the facts and the legal theories they espouse is hardly surprising for two reasons. First, as set forth in defendants' February 20, 1991 motion papers on this point, they have done so throughout this entire litigation. Second, and even more telling, the utter disregard of the truth that the Aznarans have made the trademark

of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it." [Declaration of Earle C. Cooley, Ex. F].

It is clear that Armstrong's influence and philosophy permeates the Aznarans' oppositions. Armstrong was in the office of the Aznarans' counsel, Ford Greene, for most of the week in which the Aznarans' opposition were created. [Ex. E, Declaration of Sam Brown, ¶ 3]. On August 19, 1991, Armstrong admitted to one of defendants' counsel that he was at Greene's office "helping out." [Ex. B, Declaration of Laurie J. Bartilson.] Even more disturbingly to a Court that disqualified Barry Van Sickle as counsel for the Aznarans because his presence represented an improper "extension of Yanny" into these proceedings and disqualified Yanny himself because his presence was "highly prejudicial" to defendants, Armstrong is a paralegal who was hired by Yanny to work on the Aznaran case [Transcript of Proceedings, August 6, 1991, at 25, Ex. 1 to Ex. B, Declaration of Laurie Bartilson] and thus had no business being anywhere near the opposition because: (1) Yanny was disqualified from representing the Aznarans here; and (2) Yanny has been preliminarily enjoined from directly or indirectly representing the Aznarans [Reporter's Transcript of August 6, 1991, at 34].

In essence, the facts demonstrate and the Aznarans admit that they long knew of their purported injuries, but that the limitations period did not begin to run until they had come to

the conclusion that the injuries they had allegedly suffered were the result of "brainwashing." Their opposition is the time to take that "brainwashing" theory -- the brainchild of an "expert" who has been found by federal courts from coast to coast to be unqualified to testify regarding that discredited theory -- and "just allege it."

Plaintiffs' assertion that they were "brainwashed" and so incapable of discovering their own claims is ludicrous on its face. The Aznarans are asking this Court to believe that Vicki Aznaran, who held one of the highest positions in Scientology's ecclesiastical hierarchy, was effectively "brainwashed" by her subordinates and employees. Just as it would be an impossibility for a court to entertain an action by a former Cardinal based on a claim that he had been "brainwashed" by his priests and nuns into devoting his life to Catholicism, and so did not discover until long after renouncing his religion that he had been damaged by his religious training and experiences, so must the Aznarans' claims be barred here.

As demonstrated in the declarations of Mark C. Rathbun (Ex. A) and Jesse Prince (Ex. H), the Aznarans were quite aware of damages claims against the Church, identical to their own, 10 years ago. Vicki Aznaran acknowledges as much in the video-taped speech given in October, 1984 appended to the declaration of Mark Rathbun.

The Aznaran declarations are a fraud on the Court.

The entire thrust of the Aznarans' disingenuous and tainted opposition is an attempt to so prejudice and so inflame the Court against defendants that it will escape the Court's notice that

all the Aznarans' purported claims are incontrovertibly time-barred. They resort to unsubstantiated, scurrilous allegations, the falsity of which are exposed by the Aznarans' own deposition testimony.[1] [Ex. A, Declaration of Mark C. Rathbun and exhibits thereto]. They try to avoid the issues by lengthy and melodramatically false descriptions of the RPF, and of their stay in a Hemet, California Best Western Motel. [Id.]. Vicki Aznaran now claims she "escaped" from the RPF. Earlier, she testified in her deposition she never "escaped" from the RPF, but rather that she merely left. Vicki Aznaran cannot create an issue of fact with herself. Her current tale is a series of desperate lies to avoid the consequences of her earlier testimony as corroborated by the people who left with her and those who witnessed and participated in her voluntary departure from the Church. [Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush; Ex. A, Declaration of Mark Rathbun; Ex. C, Declaration of Lawrence E. Heller and exhibits.[2]

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[1] The new factual assertions are made by the Aznarans in a pair of "cookie-cutter" declarations. These declarations are so nearly identical that Richard Aznaran refers to his "husband" [Dec. of Richard Aznaran, ¶ 13] and his "escape from the RPF" in 1987. [Id., ¶ 2]. These declarations, like many filed by the Aznarans, are utterly suspect in both form and content. Not only do the new declarations contain contradictory statements which bolster their new legal theories, their format also indicates that the Aznarans are simply willing to swear to anything which their attorneys manufacture for them. The signature pages affixed to both declarations are either completely devoid of text or nearly so and are distinctly different in typestyle from the remaining portions of the declarations. They are not printed on numbered paper, nor are they on Greene's printed paper. It is plain that pre-signed attestations are merely dated and slapped on to whatever version of the facts the Aznarans are espousing at any particular moment.

[2] Defendants expect that the Court is as tired as they are of the ever-changing stories of plaintiffs, and of the ever-increasing (continued...)

In the end, the Aznarans' lies are exposed by their own admissions, and their opposition stands utterly without merit. There is no dispute that the Aznarans' claims are time-barred and the only supposedly "controverted" facts are those which arise from the fact that the Aznarans' sworn statements now conflict with the Aznarans' sworn statements made earlier. Summary judgment for defendants, therefore, is compelled.

ARGUMENT

I. PLAINTIFFS' VIOLATION OF COURT ORDERS AND COURT RULES MANDATES THE GRANTING OF THIS MOTION FOR SUMMARY JUDGMENT

In its Order of August 9, 1991, this Court stated "Counsel are hereby reminded that the 35-page limit, excluding indices and exhibits, mandated by the Local Rules apply to all submissions." See Local Rule 3.10. Nevertheless, plaintiffs, in utter disregard of this Court's order, have filed an Opposition Memorandum of 37 pages and something called "Plaintiffs' Appendix of Facts in Support of Opposition to Motions For Summary Judgment" of 53 pages. Plaintiffs have incorporated by reference this Appendix into their one-paragraph "Statement of Facts." The total length of these two documents is 90 pages, almost triple the page limit set by this Court.

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[2](...continued)
venom with which they attack their former religion. The declarations found in defendants' Exhibits in Support of Replies to Motions for Summary Judgment on First Amendment and Statute of Limitations grounds provide the truth of these matters, supported by photographs and videotapes of the people and places claimed. The Court is urged to review these declarations and their exhibits carefully, if only to discover for itself that the "camp in the desert," was a pleasant ranch located in the heart of agricultural country, surrounded by green hills and eucalyptus trees. [Ex. A, Declaration of Mark Rathbun, Ex. 1 - 3].

Local Rule 3.10.1 specifically states that "[a]ppendices shall not include any matters which properly belong in the body of the memorandum of points and authorities or pre-trial or post-trial brief" (emphasis added). It is beyond dispute that a Statement of Facts belongs in a memorandum or brief, not in a separate unsworn appendix. Obviously, the only reason plaintiffs filed this separate appendix is to attempt to get around Local Rule 3.10 and this Court's August 9 Order.

Because of this clear violation of this Court's order and of Local Rules 3.10, 3.10.1, this Court should strike and refuse to consider plaintiffs' 53-page Appendix.[3]

Plaintiffs' opposition papers also fail to contain a Separate Statement of Genuine Issues, as required by Rule 7.14.2 of the Local Rules of this Court.[4] When the party opposing summary judgment fails to include such a statement, the facts of the movant set forth in the Statement of Uncontroverted Facts are deemed admitted:

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[3] If the Court does review the plaintiffs' Appendix, the Court should note that the plaintiffs repeatedly acknowledge that they were fully aware of their alleged injuries as early as 1974, and that they remained fully cognizant of their alleged injuries as they allegedly occurred throughout their tenure with the Church. Furthermore, the declarations filed herewith carefully show how many of the allegations contradict the Aznarans' own sworn testimony.

[4] Late on Friday, August 23, 1991, when this memorandum was finished except for preparation of indices, defendants did receive a document by telecopier which was captioned an Ex Parte Application to File Statements of Genuine Issues, though defendants have not been served. As defendants had already completed their reply in the absence of any Statement of Genuine Issues, and as the Statement has not been accepted for filing nor served, this Memorandum does not address the eleventh-hour Statement and responds only to those documents timely filed with the Court in opposition to the present motion.

> In determining any motion for summary judgment, the Court will assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the "Statement of Genuine Issues" and (b) controverted by declaration of other written evidence filed in opposition to the motion.

Rule 7.14.3, Local Rules of the United States District Court for the Central District of California (emphasis added).

The courts have been firm in requiring strict compliance with Local Rule 7.14.3 and its counterparts in other courts. In Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec, 854 F.2d 1538 (9th Cir. 1988), the Ninth Circuit affirmed the district court's grant of summary judgment where the movant adequately supported its motion with declarations and deposition excerpts, and the opposing party did not support the opposition with specific facts. The court held that Local Rule 7.14.3 "serves as adequate notice to non-moving parties that if a genuine issue exists for trial, they must identify that issue and support it with evidentiary materials, without the assistance of the district court judge." 854 F.2d at 1545 (emphasis added). Nilsson makes clear that submission of a Statement of Genuine Issues is mandatory: it is not the trial judge's burden to sift through lengthy deposition testimony, memoranda, or other documents to determine what facts the plaintiffs believes are in dispute. Rather, the party opposing summary judgment must submit "a concise 'Statement of Genuine Issues' as to which it contends

that there exists a genuine issue necessary to be litigated." Laidman v. Tivoli Industries, Inc., No. CV 89-4505-DWW, 1990 U.S. Dist. Lexis 18477 (C.D. Cal. July 17, 1990); see also Von Milbacher v. Teachers Insurance and Annuity Ass'n., Civ. No. 88-1033, 1988 U.S. Dist. Lexis 11742 (D.N.J. Oct. 28, 1988) (holding that a separate factual statement similar to a factual summary in a brief fails to meet the requirement of a concise separate statement of fact).

Where, as here, the movants have met their burden of showing entitlement to summary judgment, and the non-movant has not presented opposing facts in the required form, summary judgment must be granted. This was the outcome in Nilsson and Laidman under Local Rule 7.14.3, as well as in many cases in other courts with similar local rules. See, e.g., Cawley v. City of Port Jervis, 753 F.Supp. 128 (S.D.N.Y. 1990); Knowles v. Postmaster General, 656 F.Supp. 593 (D.Conn. 1987); Alvarado-Morales v. Digital Equipment Corp., 669 F.Supp. 1173 (D.P.R. 1987), aff'd 843 F.2d 613 (1st Cir. 1988); Furst v. New York City Transit Authority, 631 F.Supp. 1331 (E.D.N.Y. 1986).

II. PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

A. The Claim For False Imprisonment Must Be Dismissed

Setting aside the Aznarans' proclivity for self-contradiction and their consuming devotion to smearing defendants rather than responding to defendants' factual showing and arguments, the most notable feature of the Aznarans' opposition regarding the false imprisonment claim is their complete failure to refute defendants' showing that the claim, based on Ms. Aznaran's tenure on the RPF from March 3 to March 31, 1987, is

barred by the one-year statute of limitations. First, plaintiffs explicitly concede the only relevant fact -- Ms. Aznaran left the RPF on March 31, 1987, over one year before this lawsuit was filed. Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); see Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4.[5] Second, they make no legal argument that Ms. Aznaran's claim based on the RPF, standing alone, falls within the limitations period. Thus, the false imprisonment claim based on the RPF must be dismissed.

Instead, plaintiffs assert for the first time in this case, less than two months before trial, that Ms. Aznaran's false imprisonment claim is based on nine days that she and her husband spent in a publicly accessible Best Western Hotel in Hemet, California, during which time she and her husband drove to Los Angeles in their own truck, went shopping, walked around town, ate at public restaurants, went to a public laundromat, engaged in sexual activities with each other, and had a telephone in their private motel room. [V.A. Dep. at 809-21, 905; R.A. Dep. II at 68-74; Def. Ex G (Exs. 11-15)]. This belated claim must not be considered by this Court and is frivolous as a matter of law.

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[5] Plaintiffs attempt to distract this Court from the obvious fact that they missed the statutory deadline for filing their lawsuit by focusing on irrelevant allegations concerning the RPF prior to April 1, which in any event, are directly contradicted by Ms. Aznaran's own testimony. Indeed, the Aznarans and their counsel are so busy changing their stories that they directly contradict each other: Ms. Aznaran states that on March 31, 1987, when Jesse Prince and David Bush "returned [in a rental car,] I ran down the hill with my guard, Chris Byrnes, chasing me." V.A. Dec., Aug. 16, 1991, ¶ 4 (emphasis added). By contrast, her attorney states: "Jesse came back to Happy Valley in a car, picked up Vicki, who was still laying under the tree and left. V.A. Dep. at 734, 740-41." [Pl. Opp. at 13] (emphasis added).

As plaintiffs explicitly concede, "the imprisonment at Hemet was not expressly pleaded," in their complaint. Pl. Opp. at 16 n.3; see Complaint, ¶ 30 (false imprisonment allegation explicitly limited to Ms. Aznaran's tenure at Happy Valley). This Court permitted the plaintiffs until August 18, 1989 to file an amended complaint, long after much discovery was completed, including production of documentary evidence proving that Ms. Aznaran had left the RPF on March 31, 1987. See Def. Exhibit D [Ex. 40 to V.A. Dep.]; Def. Exhibit G. Plaintiffs chose not to amend their complaint, and therefore never alleged that the period in the motel in Hemet constituted false imprisonment. Based on the absence of any such allegation, the Aznarans must be precluded from raising this claim for the first time now.

The Aznarans further argue that they should be entitled to rely on their allegations in the July 7, 1989 Joint Status Conference Report of Counsel. Pl. Opp. at 16 n.3. Defendants agree. In that Report, plaintiffs stated the false imprisonment claim in its entirety as follows:

> As part of defendants' program of coercive persuasion, and as an additional technique thereof, plaintiff Vicki Aznaran was falsely imprisoned in something called the Rehabilitation Project Force wherein she was constantly guarded, compelled to eat substandard food, to run around a telephone pole literally for days on end, locked up at night and was subjected to hours of indoctrination daily.

Status Report, at 5-6 (emphasis added). As the Court can see, there is not even a hint that the false imprisonment claim

includes the Aznarans' stay at the Best Western Motel.

Moreover, even if it were not time-barred, a false imprisonment claim based on the Aznaran's alleged experiences in the RPF would not be justiciable. See, Motion for Summary Judgment Pursuant to First Amendment, pp. 14-25; 32-34. The RPF is based solely on the writings of L. Ron Hubbard, and is considered by the members of the Scientology religious order to whom those writings apply to be a mandatory and essential element of their religious beliefs and practice. [Flinn Dec., Exhibit to First Amendment Motion, ¶ 24; Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush]. The appropriateness of a hierarchical church's non-violent disciplinary actions taken against a member has consistently been held to be beyond the cognizance of civil courts. Indeed, the courts have been particularly deferential when questions of church discipline are at issue. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717 (1976) ("questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern"); Higgins v. Maher, 210 Cal.App.3d 1168, 1170, 258 Cal.Rptr. 757, 757-58 (1989) (holding disciplinary actions against a Roman Catholic priest, including removal from his position, incarceration in a psychiatric hospital, and treatment which included psychiatric drugs and electroshock, were nonjusticiable.)

Plaintiffs also rely on the "deposition and discovery procedure" as a basis for their newly invented claim. Pl. Opp. at 16 n.3. Yet this Court could painstakingly scrutinize every

word in the record without finding a single hint that plaintiffs intended to assert this claim. Certainly defendants could not have been expected to conclude on their own that the Aznarans would conceivably assert that a stay at a public motel during which time the Aznarans moved about freely, travelled to Los Angeles and to other public facilities and enjoyed the use of a private room with a telephone, constituted false imprisonment.

The obvious truth is that when plaintiffs and their counsel finally realized that the indisputable documentary evidence proved that Ms. Aznaran left the RPF on March 31, and that her false imprisonment claim was dispositively barred by the statute of limitations, they simply invented a new claim and created new "facts" to support it. This Court must not countenance such abuse of the integrity of its processes by permitting a brand new claim based wholly on self-contradicted facts to be asserted only a few weeks before trial.

In any event, the claim of false imprisonment based on the period from March 31 to April 9, 1987 is completely meritless as a matter of law. Defendants submit that no court in the history of this country has held that a nine-day stay in a publicly accessible motel, with a telephone used to make numerous long-distance calls, including to Ms. Aznaran's sister, and which period included a drive in their own pick-up truck to Los Angeles, eating out in public restaurants, taking walks on the public streets, shopping in stores open to the general public, and going to a public laundromat, constitutes false imprisonment.

It is undisputed that the Aznarans had substantial periods of time alone in their motel room and that they walked around

town and went to stores and restaurants by themselves. See V.A. Dep. at 817-21.[6] Indeed, the Aznarans frequently left their hotel room, and were late for several appointments with Mr. Rathbun during this time period, saying that they had been out to restaurants, or out shopping. [Ex. B, Declaration of Mark Rathbun.] Once they drove their truck to Los Angeles, breaking a meeting with Mr. Rathbun completely. Id. No one prevented the Aznarans from using the telephone in their room to call the police, the FBI, the media, the motel manager, their Congressman or other local, state or federal officials. No one prevented the Aznarans when they were in Los Angeles from going to the police or the FBI. No one prevented the Aznarans from driving their truck to the Hemet Police Station, blocks from their motel.

The Aznarans' allegation that they feared unspecified consequences in the future if they left the motel in Hemet does not constitute false imprisonment as a matter of law, and plaintiffs have not cited a single case that even suggests the contrary. As plaintiffs concede, the tort of false imprisonment requires the "nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." Molko v. Holy Spirit Association, 46 Cal.3d 1092, 1123, 252 Cal.Rptr. 122, 139 (1988) (emphasis added), cert. denied, 490 U.S. 1084 (1989) (internal quotations and citations omitted); see Pl. Opp. at 6. The confinement must be complete, and if there is a known reasonable means of escape, there can be

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[6] Ms. Aznaran's testimony is a far cry from her counsel's shrill and false assertions that the Aznarans were guarded 24 hours a day and were ordered to stay in the motel unless they received permission to leave. Pl. Opp. at 11, 15-16.

no false imprisonment. See Restatement of Torts (Second), section 36, at 54-55 (1965) (hereinafter "Rest."). Because the Aznarans could have walked away, driven away, or called the police, the claim that they were confined is frivolous.

This case is virtually indistinguishable from Snyder v. Evangelical Orthodox Church, 216 Cal.App.3d 297, 264 Cal.Rptr. 640 (1989). In Snyder, one plaintiff, Roberson, a Bishop of the Church, confessed to his superior that he was having an extramarital affair with Snyder. The superior ordered Roberson to spend a week in a motel without outside contact, including his family, or his adulterous relationship would be exposed. The court rejected his claim of false imprisonment based on his submission to the threats and "blackmail" to reveal his confidences, where Roberson spoke to Snyder and his daughter; "went on a drive with both women; left the motel and took a walk; was visited in the motel by Snyder; [and] went out to dinner with Snyder ..." Id. at 304, 264 Cal.Rptr. at 643. Just as there was no false imprisonment in the motel in Snyder, there was none at the Hemet Best Western Motel that served as home base for even broader freedom of movement and activity for the Aznarans.

The Aznarans are correct that there can be false imprisonment through severe duress, but they persist in ignoring the fact that there still must be complete confinement. See Rest., section 40A, at 61. Thus, even assuming the Aznarans were subjected to duress during their stay at the Best Western Motel, it is uncontroverted that they were not completely confined.

Each case cited by plaintiffs for the proposition that duress or fear of threats may constitute false imprisonment

involved extraordinarily threatening consequences and extreme confinement. See People v. Riddle, 189 Cal.App.3d 222, 228, 234 Cal.Rptr. 369, 373 (1987) (defendant pointed gun at mother and ordered both parents out of the trailer, i.e., to go where they did not wish to go; People v. Martinez, 150 Cal.App.3d 579, 586, 198 Cal.Rptr. 565, 569 (1984) (victim repeatedly raped by defendant, who threatened her with screwdriver and threatened to shoot her husband if she resisted); Parnell v. Superior Court, Alameda County, 119 Cal.App.3d 392, 409, 173 Cal.Rptr. 906, 916 (1981) (abduction of seven-year-old boy, held by defendant for eight years, and subjected to repeated acts of sodomy); Shanafelt v. Seaboard Finance Co., 108 Cal.App.2d 420, 422-23, 239 P.2d 42 (1951) (defendant blocks pregnant woman's only means of escape; orders her to stay in the house until her furniture is seized).[7] Plaintiffs' reliance on these cases to assert false imprisonment in a Best Western Motel demonstrates the desperate and frivolous nature of their claim.

Plaintiffs' assertions that there can be false imprisonment by a private party within the confines of the area from Hemet to Los Angeles is likewise frivolous. The sources upon which plaintiffs rely referred exclusively to improper use of legal process by government officials to restrain an individual within a precise geographic area. See Rest., section 36, at 56 (comment

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[7] The ancient case of Fotheringham v. Adams Express Co., 36 F. 252 (E.D.Mo. 1888), is wholly irrelevant to the facts here. In Fotheringham, the plaintiff had no means of escape, as he was "at all times subject to the control and direction" of defendant's agents, and force was threatened against him if he attempted to leave. This is a far cry from the Aznarans' sojourn at the Best Western Motel.

b); Prosser and Keaton On Torts section 11 (5th ed. 1984); Allen v. Fromme, 141 App.Div. 362, 126 N.Y.S. 520 (1910) (sole case relied upon by Prosser; plaintiff released from prison upon posting bond that confined him to "jail limits").

As plaintiffs concede that Ms. Aznaran voluntarily left the RPF on March 31, 1987, and because she was not falsely imprisoned after that time, or ever, the continuing tort doctrine or "conspiracy" doctrines, upon which plaintiffs so heavily rely, Pl. Opp. 16-21, is irrelevant and the claim must be dismissed.

B. The Claims for Intentional and Negligent[8] Infliction of Emotional Distress Must Be Dismissed[9]

In Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment, dated Dec. 7, 1990, at 54-57 (hereinafter "Pl. Dec. 7 Mem."), the Aznarans alleged several specific acts causing them emotional distress, in addition to their claim of

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[8] Plaintiffs assert that their claim for negligent infliction of emotional distress is based "on the principles set forth in Molko and in Wollersheim v. Scientology." Pl. Opp. at 22. Molko did not contain a claim for negligent infliction of emotional distress, see Molko, supra, 46 Cal.3d at 1101, 252 Cal.Rptr. at 125, and the court in Wollersheim rejected plaintiff's claim for negligent infliction of emotional distress. Wollersheim, 212 Cal.App.3d 872, 900, 260 Cal.Rptr. 331, 349 pet. for cert. granted, vacated and remanded on other grounds, ___ U.S. ___, 111 S.Ct. 1298 (1991). Plaintiffs' express reliance on Wollersheim mandates dismissal of the negligence claim. See also Nally v. Grace Community Church, 47 Cal.3d 278, 253 Cal.Rptr. 97 (1988) cert. denied, 490 U.S. 1007 (1989).

[9] Defendants do not understand what plaintiffs mean in asserting that this Court has already determined the legal sufficiency of their second through eleventh causes of action. Pl. Opp. at 21-22. Obviously, this Court has not addressed the statute of limitations issues, which defendants expressly reserved in their summary judgment motion dated October 22, 1990. Any suggestion that the Court has already ruled on the limitations issues is simply false.

"brainwashing."[10] In this motion, defendants demonstrated that each of the alleged specific acts set forth in plaintiffs' prior memorandum occurred before April 1, 1987, and were barred by the statute of limitations, because the Aznarans themselves had explicitly testified that they experienced and were aware of the alleged emotional distress at the time. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7. In their opposition, plaintiffs have not even attempted to refute defendants' showing that each of the specific acts set forth in their prior opposition papers is barred by the statute of limitations. Thus, any emotional distress claim based on these specific acts must be dismissed.

Plaintiffs now appear to rely exclusively on their claim based on "unwitting[] expos[ure] to coercive persuasion." Pl. Opp. at 24; see Joint Status Report, at 5.[11] As set forth in Def. Mem. at 16-19, this claim is barred by the two-year Texas statute of limitations for personal injury. Tex. Civ. Code Ann. section 16.003(a) (Vernon 1986). Plaintiffs are simply wrong that California law applies to this claim, which arose in Texas in or about 1972. See Pl. Opp. at 22-23 n.9. Thus, plaintiffs' reliance on California tolling theories are simply irrelevant.

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[10] Plaintiffs' "coercive persuasion" or "brainwashing" theory is barred by both the First Amendment and standards for admissibility of purportedly scientific evidence. See Defendants' Motion for Summary Judgment, Pursuant to the First Amendment, dated July 11, 1991, at 27-32, and Defendants' Motion to Exclude the Testimony of Plaintiffs' Designated Expert, dated July 29, 1991.

[11] To the extent plaintiffs are claiming that the alleged acts set forth in Pl. Opp. at 29-30, occurring after March 31, 1987, are themselves actionable, as opposed to being part of the alleged coercive persuasion, this Court must not consider such claims, as they form no part of the Complaint, the Status Report, or plaintiffs' prior submissions concerning their emotional distress claims.

First, when a claim arises in another state, "in determining the time when a cause of action arose and the statute of limitations began to run, the courts will apply the law of the state in which the cause arose." 12 Cal.Jur.3d, Conflict of Laws section 101, at 604 (1974) (emphasis added); see State of Ohio v. Porter, 21 Cal.2d 45, 51-52, 129 P.2d 691 (1942), cert. denied, 318 U.S. 757 (1943).

Second, when a suit is brought in California for a cause of action arising in another state, and the claim would be barred in that state, California "borrows" the statute of limitations of that state and bars the claim in the courts of California. See Cal. Code Civ. Proc. section 361.[12] Only "[w]here the cause of action was held by a citizen of this state from the time it accrued," would the borrowing statute not apply. 3 B. Witkin, California Procedure, section 71, at 99 (3d ed. 1985); see Biewend v. Biewend, 17 Cal.2d 108, 115, 109 P.2d 701 (1941) ("since the plaintiff has not been a citizen of this state from the time the cause of action accrued, [section 361] has the effect of applying the Missouri statute of limitations to those [claims] accruing" in Missouri) (emphasis added); 12 Cal.Jur.3d, Conflicts of Law section 103 at 606-07 (exception to section 361 applies only when plaintiff "has held the cause, as a California

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[12] California Code of Civil Procedure section 361 states in full:

> When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who has been a citizen of this state, and who has held the cause of action from the time it accrued.

citizen, from the time it accrued") (emphasis added); Stewart v. Spaulding, 72 Cal. 264, 266, 13 P. 661 (1887). The Aznarans were not citizens of California until 1981, nine years after their emotional distress cause of action accrued, nor were they California citizens in April 1988 when this suit was commenced. Thus, because plaintiffs do not even attempt to dispute that the Aznarans' emotional distress claim based on "coercive persuasion" would be barred if brought in Texas, see Def. Mem. at 17-18, section 361 applies to bar the claim in California.

Moreover, even if California limitations law applied to this claim, plaintiffs do not even attempt to dispute that defendants' alleged practices were allegedly causing them emotional distress as early as 1974, and that they were acutely aware of this distress at that time as well as throughout their tenure with the Church. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7; Declaration of Vicki Aznaran, dated Aug. 16, 1991, ¶ 13(E); Declaration of Richard Aznaran, dated Aug. 16, 1991, ¶ 4. Thus, plaintiffs' reliance on "delayed discovery" or "fraudulent concealment" is to no avail.

The Aznarans are simply wrong, and can cite no authority for their assertion that their claims accrued only when "the Aznarans discovered that they had been brainwashed and unduly influenced by defendants." Pl. Opp. at 23. Rather, the law is clear that the claim accrued no later than when the Aznarans were aware that they allegedly suffered severe emotional distress, not when they came up with a legal label -- "brainwashing" -- for the emotional distress they concededly were aware they were allegedly suffering. Thus, the California Supreme Court has held:

> the uniform California rule is that a limitations period dependent on discovery of the cause of action begins to run no later than the time the plaintiff learns, or should have learned, the facts essential to his claim. It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action. Thus, if one has suffered appreciable harm and knows or suspects [the] cause, the fact that an attorney has not yet advised him does not postpone commencement of the limitations period.

Gutierrez v. Mofid, 39 Cal.3d 892, 897-98, 218 Cal.Rptr. 313, 316 (1985) (citations omitted, emphasis original and added); see McGee v. Weinberg, 97 Cal.App.3d 798, 802, 159 Cal.Rptr. 86, 89 (1979) ("Knowledge of facts is what is critical, not knowledge of legal theories.") (emphasis added).

Plaintiffs' "fraudulent concealment" tolling theory is wholly untenable as applied both to the emotional distress claims and to every other claim of the Aznarans. A fraud claim (or any claim based on fraudulent concealment) runs from the time when a plaintiff, "tested by an objective standard," "discovers the facts constituting the violation or in the exercise of reasonable diligence should have discovered them." Meadows v. Bicrodyne Corp., 785 F.2d 670, 672 (9th Cir. 1986) (citations omitted); Gutierrez, supra, 39 Cal.3d 896-99, 218 Cal.Rptr. at 315-16. Moreover, "[i]f a plaintiff has inquiry notice, he must prove that he could not have reasonably discovered the facts constituting the alleged fraud." David K. Lindemuth Co. v.

Shannon Financial Corp., 660 F.Supp. 261, 264 (N.D.Cal. 1987); Miller v. Bechtel Corp., 33 Cal.3d 868, 191 Cal.Rptr. 619, 623-24 (1983); Def. Mem. at 25-27. Defendants have shown in explicit detail that, as a matter of uncontroverted fact, plaintiffs should have been and in fact were well aware of any alleged frauds no later than 1984, and that they were on reasonable inquiry notice of any alleged frauds, which could readily have been discovered by plaintiffs, well over three years before they commenced this lawsuit. See Def. Mem. 27-38; Separate Statement of Uncontroverted Facts, Fact Nos. 10-16.

Thus, because the Aznarans concededly were aware well before April 1, 1987, that the alleged acts of defendants were allegedly causing them emotional distress, and because all the acts that plaintiffs have testified or previously asserted caused them emotional distress accrued before April 1, 1987, the claims for negligent and intentional infliction of emotional distress must be dismissed as untimely.

C. The Claim for Loss of Consortium Must Be Dismissed

Plaintiffs do not contest the facts set forth by defendants, Pl. Opp. at 36-37, which demonstrate that plaintiffs' alleged loss of consortium ended no later than March 31, 1987, more than one year prior to the filing of this lawsuit, that plaintiffs were aware they were experiencing a loss of consortium at the time, and that they were aware the alleged harm was caused by defendants' alleged conduct. See Def. Mem. at 21-24; Uncontroverted Fact Nos. 7-9. This Court must accept this undisputed evidence and dismiss this claim.

Plaintiffs' only excuse for their late filing of this claim

is that "the injuries caused to plaintiffs' marriage in consequence of defendants' imposition of coercive persuasion without plaintiffs' knowledge or consent were not necessarily immediately attributable to defendants' misconduct." Pl. Opp. at ¶ 37 (emphasis added). Not only is this the first time plaintiffs have ever made this vague assertion, but the mere statement that the inquiries "were not necessarily" attributable to defendants does not constitute the "specific facts showing that there is a genuine issue for trial" that the non-moving party "must set forth" to defend against a motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis added).

Here, of course, the undisputed evidence shows that, whether or not plaintiffs "necessarily" would be aware of the cause of their alleged claim, plaintiffs were in fact aware of their alleged loss of consortium at the time, and that they did in fact know it was attributable to defendants' alleged conduct. Thus, Ms. Aznaran testified that she asked Mr. Aznaran for a divorce in 1974, as a result of statements by Dean Stokes that Mr. Aznaran was a "suppressive person," which Ms. Aznaran ultimately accepted as true. V.A. Dep. at 862-63. Under the Texas two-year statute of limitations, which applies pursuant to the California borrowing statute, Civ. Proc. Code § 361, the 1974 divorce claim is untimely. Def. Mem. at 21.

As to the claim based on purported brief periods of separation in 1986 until March 31, 1987, Ms. Aznaran testified that she specifically requested of her superiors in the fall or winter of 1986 that she "wanted to work something out so that I

could be with Richard, we had been apart too long." V.A. Dep. at 1218; Def. Mem. at 23; Uncontroverted Fact No. 8. The Aznarans also assert that they were aware that they were separated as a result of defendants' alleged conduct while Ms. Aznaran was on the RPF from March 3 to March 31, 1987. Pl. Opp. at 12; R.A. Dec., Aug. 16, 1991, ¶ 4."

Even if the delayed discovery rule applied to a claim of loss of consortium, the statute runs not from the time a plaintiff determines her legal theory, but from when "he has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation." Gutierrez, supra, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315 (internal quotations omitted).

As the Aznarans were indisputably aware of their purported injury and its cause before April 1, 1987, this claim must be dismissed. Priola v. Paulino, 72 Cal.App.3d 380, 140 Cal.Rptr. 186, 191-92 (1977); Uram v. Abex Corp., 217 Cal.App.3d 1425, 1438, 266 Cal.Rptr. 695, 703 (1990). That the Aznarans had not yet come up with the label of "brainwashing" to describe the cause of the injury, of which they were long aware, is, of course, legally irrelevant. See Gutierrez, supra, 39 Cal.3d at 897-98, 218 Cal.Rptr. at 316; McGee, supra, 97 Cal.App.3d at 803, 159 Cal.Rptr. at 89.

D. Plaintiffs' Remaining Causes of Action Must Be Dismissed

Plaintiffs do not controvert any of the facts or law set forth by defendants, which demonstrate that each of plaintiffs' six remaining causes of action -- fraud, constructive fraud, breach of contract, restitution, invasion of privacy, and

statutory California minimum wage claim -- are barred by the statute of limitations.[13] Instead, plaintiffs simply assert, without any explanation:

> Each of the tolling theories, discussed above, is applicable to the remaining causes of action and, under the facts of this case, are sufficient to raise triable issues as to the accrual of the statute of limitations of each of the remaining causes of action.

Pl.Opp. at 37.

As plaintiffs have failed to controvert any of defendants' Statement of Uncontroverted Facts, they must all be taken as true. See Local Rule 7.14.3. Because there is nothing in plaintiffs' opposition papers as to these six causes of action to which defendants can respond, defendants hereby rely on their prior memorandum and supporting papers, which demonstrate that each of these six claims are time-barred, as well as Point IIB, supra, which debunks plaintiffs' "fraudulent concealment" tolling theory, and Point III, infra, which demonstrates that plaintiffs' "conspiracy" tolling theory is meritless.

III. THE STATUTE OF LIMITATIONS IS NOT TOLLED BY CONSPIRACY

The Aznarans contend that the statute of limitations should

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[13] Defendants once again note that plaintiffs once again concede that there is no cause of action for civil conspiracy. Pl. Opp. at 17 n.7; see Joint Status Report at 8 n.1; Baltimore Football Club, Inc. v. Superior Court, 171 Cal.App.3d 352, 359 n.3, 215 Cal.Rptr. 323, 326 n.3 (1985); 5 B. Witkin, Summary of California Law, section 44 (9th ed. 1988); 12 Cal.Jur.3d, Civil Conspiracy section 4 at 179 (1974) ("Since there is no cause of action for conspiracy in and of itself, the statute of limitations is determined by the nature of the action in which the conspiracy is alleged or appears."). Thus, there is no basis for this Court's continued refusal to dismiss the plaintiffs' fifth cause of action alleging "Conspiracy."

be tolled because defendants' alleged acts were allegedly carried out pursuant to a civil conspiracy, citing Wyatt v. Union Mortgage Co., 24 Cal.3d 773, 157 Cal.Rptr. 392 (1979). Plaintiffs seriously misconstrue the scope of Wyatt, and on the undisputed facts of this case, Wyatt does not toll the statute of limitations for any of plaintiffs' claims that are otherwise barred by the statute of limitations.

A. There is No "Last Overt Act" Pursuant to a Conspiracy within the Limitations Period For Several of the Causes of Action

Assuming for the moment that the tolling doctrine of Wyatt applies to non-fraud actions, but see Point IIIB, infra, no overt acts even remotely relevant to several of the alleged torts are even alleged to have occurred within the limitations period. In the absence of an overt act in furtherance of a conspiracy to commit the alleged wrong, the limitations period is not tolled.

Ms. Aznaran's alleged false imprisonment at the RPF ended on March 31, 1987, outside the one-year limitations period, and the newly invented claim of false imprisonment after March 31, 1987, is meritless as a matter of law. See Point IIA, supra. Even assuming that there was a conspiracy to falsely imprison Ms. Aznaran at the RPF, there is no evidence of any overt act in furtherance of such false imprisonment conspiracy after she left on March 31. Of course, under Wyatt, "it is imperative for the plaintiff to allege when the last overt act took place." 24 Cal.3d at 789, 157 Cal.Rptr. at 401 (internal quotations omitted).

In addition, the "last overt act" must be in furtherance of a conspiracy to commit the alleged tort. In other words, a last

overt act in furtherance of a conspiracy to defraud cannot toll the statute of limitations for the unrelated claim of false imprisonment. See Wyatt, 24 Cal.3d at 788, 157 Cal.Rptr. at 401 (plaintiff must allege "at least some act pursuant to the conspiracy was still being performed . .. within the . . . limitations time period") (emphasis added); Maheu v. CBS, Inc., 201 Cal.App.3d 662, 674, 247 Cal.Rptr. 304, 310-11 (1988) (act that gives rise to a copyright claim is not in furtherance of a conspiracy to convert wrongfully the same property). Because there was no false imprisonment "conspiracy" after March 31, 1987, the claim is time-barred, even assuming Wyatt's relevance.

The identical argument applies to the loss of consortium claim. Any alleged loss of consortium ended no later than March 31, 1987, outside the limitations period. See Point IIC, supra; Def. Mem. at 19-25; Uncontroverted Fact Nos. 7-9. Plaintiffs allege no overt act in furtherance of a conspiracy to cause a loss of consortium after March 31, 1987, and Ms. Aznaran specifically testified that the plaintiffs experienced no such loss after March 31, 1987. V.A. Dep. at 746-50, 818-21. Therefore this claim is time-barred, even if Wyatt otherwise is applicable to this tort.

As to Ms. Aznaran's invasion of privacy claim, her testimony explicitly eliminates any issue of fact whether there was ever a conspiracy to invade her privacy, let alone an overt act in furtherance of such a conspiracy after March 31, 1987. Thus, Ms. Aznaran's testimony shows that the individual who allegedly invaded her privacy did so on his own, and against the wishes of the only two other individuals who were aware of his acts. V.A.

Dep. at 1260-62; Def. Mem. at 47-48; Fact No. 23.[14]

B. The Conspiracy Tolling Doctrine Does Not Apply to Torts

Both the specific holding of Wyatt and its rationale are limited to claims of economic fraud, and this federal court should be cautious in expanding this unusual doctrine, particularly given that the Ninth Circuit has explicitly repudiated Wyatt when federal law governs the time of accrual of a cause of action. See Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); Compton v. Ide, 732 F.2d 1429, 1432-33 (9th Cir. 1984) ("Mere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. . . . It is the wrongful act, not the conspiracy, which is actionable in a civil case."). Defendants are unaware of any other jurisdiction that has adopted Wyatt's civil conspiracy theory, presumably because, as plaintiffs' position here amply illustrates, it virtually eliminates the statute of limitations as a bar to trial on long-stale claims.

In Wyatt, the plaintiffs alleged claims of fraud and constructive fraud in the obtaining of a mortgage loan. Wyatt focused on the nature of the fraud in that case as an ongoing

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14 The totally vague, unsubstantiated statements in plaintiffs' declarations that their invasion of privacy claim is based on the acts of one Kimberly Yager, V.A. Dec. ¶ 13(F); R.A. Dec. ¶ 12(E), must be ignored by this Court. This alleged incident has never been part of the Aznarans' claim for invasion of privacy in their complaint, status report, testimony, or any other papers filed in this matter. Again, the Aznarans have chosen to invent a new claim once they realize that the claim heretofore asserted is time-barred. In any event, nothing in the plaintiffs' papers demonstrates an invasion of privacy by Ms. Yager, let alone by defendants.

scheme that froze the plaintiffs in place absent judicial relief. 24 Cal.3d at 786, 788, 157 Cal.Rptr. at 400-01.

The Aznarans' attempt to apply Wyatt to any and all of their various tort, contract, and statutory claims goes far beyond any known construction of the Wyatt fraud tolling theory. The Wyatt doctrine has never been extended to claims for negligent or intentional infliction of emotional distress, breach of contract, restitution, loss of consortium, invasion of privacy, or a statutory minimum wage claim. The acts plaintiffs complained of here that allegedly resulted in such wrongs were in fact separate, distinct and completed acts, which gave rise to a cause of action at the time they allegedly occurred, and certainly no later than when plaintiffs became aware of the fact of their alleged injuries. See Gutierrez, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315. These distinct acts cannot be blithely equated with the type of unified, ongoing economic scheme to defraud a party, in which individual acts do not themselves support a claim for damages, but rather ultimately culminate in a fraud being perpetrated on the plaintiff and which holds the plaintiff in place, such as occurred in Wyatt.

Not only should this federal court not distort Wyatt to reach intentional tort, contract, and statutory claims, but it is inconceivable that the California courts would so stretch Wyatt to reach the long-stale allegations here, many of which accrued over fifteen years before suit was commenced and as to which the plaintiffs themselves cannot recall the relevant facts. In the interests of federalism and comity alone, this federal court should not be the first court to expand Wyatt so drastically.

C. Under the Circumstances Here, Wyatt Does Not Apply

The circumstances of the alleged fraud here, involving alleged misrepresentations by defendants that they would provide plaintiffs with spiritual and psychological services that would make them better persons, Complaint, ¶ 54, are so distinct from Wyatt as to make the civil conspiracy tolling theory inapplicable for several reasons.

First, the Aznarans' testimony makes clear that there could not have been a conspiracy to defraud them. Mr. Aznaran concedes that he made the same representations to others, including to Ms. Aznaran, that he now alleges were fraudulent, and that he believed them at the time. R.A. Dep.II at 635-41. He further testified that those who made the representations to him indicated that they too believed them, and that Mr. Aznaran believes that they too were "brainwashed". Id. at 642, 647-57. Similarly, Ms. Aznaran explicitly testified that the entire leadership of Scientology was "brainwashed" into accepting Scientology beliefs. V.A. Dep. at 1200-01. Mr. Aznaran said:

> You don't rise in power unless you are brainwashed. It's only people who are thoroughly and totally and completely brainwashed that are trusted with power.

R.A. Dep.II at 666. In such circumstances, where everyone believes in the statements alleged to be fraudulent, the Aznarans have failed to create a genuine issue of fact either of a fraud or of a conspiracy to defraud the plaintiffs.

Second, the plaintiffs have relied upon five types of representations as the exclusive basis for their fraud claims. See Pl. Dec. 7 Opp. at 38; see Def. Mem. at 35-37. These

representations were made to the Aznarans between 1971 and 1973 in Texas. Pl. Dec. 7 Opp. at 33-36; see also V.A. Dep. at 1236-50 (alleged representations made to her between 1972-77 in Texas were made "too long ago" for her to remember specifically what was represented to her). Because plaintiffs have relied exclusively on representations made to them in Texas, the Texas statute of limitations law applies, pursuant to California's borrowing statute. See Civ. Proc. Code . Like the Ninth Circuit, Texas follows the discovery-of-the-fraud accrual rule, Interfirst Bank-Houston v. Quintana Petroleum Corp., 699 S.W. 2d 864, 875 (Tex.App. 1985), not California's unique civil conspiracy tolling theory. Def. Mem. at 27. Thus, under Texas law, only those fraudulent acts that occurred within two years of discovery of the fraud are actionable. See Cathey v. First City Bank of Arkansas Pass, 758 S.W.2d 818, 822 (Tex.App. 1988) ("any act committed more than two years prior to the filing of this conspiracy action would be barred by limitations").

Even if the Aznarans continued to experience the alleged detriments of the alleged misrepresentations after they moved to California in 1981, eight to ten years after they were allegedly induced to join the Scientology religion, there is no legal basis for this federal court to engraft the California civil conspiracy tolling doctrine onto Texas law. Moreover, there is no "last overt act" of a conspiracy to defraud within the three-year limitations period, as Ms. Aznaran testified that the last fraudulent misrepresentation occurred in 1977. Thus, Ms. Aznaran's fraud claims resulting from representations in Texas are barred by the statute of limitations, and Wyatt is

irrelevant. That Ms. Aznaran is now willing to contradict her sworn testimony, and assert that she continued to rely on alleged misrepresentations (from people that she has testified believed the alleged representations themselves) simply demonstrates plaintiffs' willingness to rewrite the "evidence" to suit their monetary desires.

Even assuming that California law applies, that the representations were fraudulent, and that overt acts in furtherance of a conspiracy to defraud occurred within the limitations period, any reasonably prudent person would have discovered the true nature of the allegedly fraudulent representations by the early 1980's at the absolute latest. Def. Mem. at 25-38; Uncontroverted Fact Nos. 5-16. Once discovered, the Aznarans could simply have ended their association with the Church, as they ultimately chose to do in 1987. The Aznarans have simply produced no evidence that, at any time after they did or should have discovered the alleged frauds in the early 1980's, they could not have followed the procedures for leaving their staff positions that they ultimately followed in April 1987.

From the time a reasonable person would have discovered defendants' allegedly fraudulent conduct, any detriment the Aznarans experienced was, as a matter of fact and law, a voluntary decision to remain with the Church, and was not a result of any fraud by defendants that continued to hold the plaintiffs in place, as required by Wyatt. The Aznarans, of course, had no legal obligation to remain in the Church and were free to leave. Their own testimony clearly shows that they did in fact choose to leave the Church as members in good standing in

1987 and received a low-interest loan of $20,000 and letters of recommendation for future employment, which Ms. Aznaran stated were "good consequences" of leaving. V.A. Dep. at 1185.

This situation contrasts sharply with Wyatt. The key point in Wyatt is that even after the plaintiffs learned of the fraud, and even after they had hired attorneys, there was no way to get out of their legal and economic obligations to defendants prior to judicial action. Thus in Lewelling v. Farmers Ins. of Columbus, Inc., 879 F.2d 212 (6th Cir. 1989), the court, in applying California law, made clear that Wyatt is an unusual exception to the general rule that a fraud claim "begins to run when an individual becomes aware of fraudulent harm." Id. at 217. For the Wyatt exception to apply there must be "evidence . . . that sheer economic duress or overpowering influence rendered plaintiffs incapable of acting to protect their legal rights." Id. Nothing of the kind is present here. When the Aznarans decided to leave their staff positions but remain Scientologists in good standing, they did just that, without violating any legal or economic obligations. Wyatt, therefore, is wholly inapplicable.

IV. THE COURT SHOULD DISREGARD THE REMAINDER OF THE OPPOSITION

As detailed in the Preliminary Statement, supra, the real thrust of the Aznarans' Opposition is not the foregoing, ineffectual legal contentions, but rather the "just allege it" philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's continuing involvement despite this Court's explicit order, and the willingness of the Aznarans and their counsel to say anything at any time to try to breathe life into their false and moribund

claims. Armstrong's "helping out" while the Opposition was concocted not only reveals the continuing taint of Yanny's involvement with this case, it establishes the guiding principle that resulted in an Opposition that avoids cogent analysis of pertinent law and fact and instead seeks to prejudice the Court to the point of overlooking the motion, the relevant matters, and the fact that the Aznarans have all but expressly conceded that all their claims are time-barred.

Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church. [Cooley Dec., ¶ 4] In that tape, in the context of a discussion of attempting to prove facts in a civil proceeding where evidence was unavailable, Armstrong (under the mistaken belief that he was speaking with an ally) stated what a civil litigant should do when faced with a lack of evidence:

> They can allege it. They can allege it.
> They don't even have -- they can allege it.
>
> * * *
>
> Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- We don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it.

[Id. at ¶ 4.]

The Aznarans literally trip over their own sworn statements in employing Armstrong's view of what courts will accept from civil litigants. They and their counsel are hopeful that smearing and falsely accusing defendants of all manner of things will suffice to prejudice the Court against the defendants to such an extent that truth, fact, law, and evidence are subordinated to a barrage of false and irrelevant accusations. Defendants submit the Rathbun, Bush, Prince, Heller, Bowles and Farny Declarations to set the record straight and debunk the lies that plaintiffs have elected to allege. They do not create any issue of material fact; this motion, based upon statutes of limitation and essentially undisputed facts, is meritorious on its own pertinent facts. Those declarations simply show that the Aznarans, Yanny, Greene and Armstrong will say absolutely anything, no matter how false or heinous, when they are concerned.

They are concerned here, trapped between facts that unassailably set their supposed claims in the legally distant past and statutes that bar their claims forever.

CONCLUSION

For the reasons set forth herein, and in defendants' previous memorandum and papers filed therewith, this Court should grant the defendants' motion for summary judgment dismissing plaintiffs' entire complaint as barred by the applicable statutes of limitations.

Dated: August 26, 1991

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 26, 1991, I caused to be served the foregoing document described as REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.

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RICHARD N. AZNARAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTER CLAIM	No. CV-88-1786-JMI(Ex) **DECLARATION OF GERALD ARMSTRONG REGARDING ALLEGED "TAINT" OF JOSEPH A. YANNY, ESQUIRE** Date: September 9, 1991 Time: Discretionary Ct: Hon. James M. Ideman

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DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare and state that:

1. I was a Scientologist and held many positions in many sectors of Scientology, hereinafter referred to as "the organization," from 1969 to 1981. I have been involved in organization litigation as a witness, defendant, plaintiff and paralegal from 1982 until the present. I have testified in three trials and in depositions in ten organization cases approximately forty-seven days. I have authored over twenty-five declarations concerning L. Ron Hubbard, Scientology practices and the litigation. I am by trade a philosopher, writer and artist. In 1986 I founded a church which now has many members internationally.

2. I am the defendant and cross-complainant in the case of Church of Scientology of California v. Armstrong Los Angeles Superior Court No. C420153. A decision in that case was rendered after a lengthy bench trial by Judge Paul G. Breckenridge, Jr. on June 20, 1984. The California Court of Appeal opinion, No. B025920, issued July 29, 1991, affirming the Superior Court's decision, has recently been filed in this case as an exhibit to the Aznarans' oppositions.

3. In December 1986 I entered into a settlement agreement with the organization, a copy of which is filed herewith as Exhibit 1. The organization did not honor the agreement, however, but has continued a program of threats and attacks to this day. I have detailed what I knew of these threats and attacks up to March 15, 1990 in my declaration of that date. The circumstances at the time of the settlement and a rebuttal of various organization attacks are contained in a declaration I executed on December 25, 1990. I can supply these declarations to the Court if it so wishes.

4. I make this declaration to respond to various allegations about me made by the organization in its papers recently filed in this case.

5. Organization attorney Laurie Bartilson states that my aid to attorney Ford Greene in preparing the Aznarans' recently filed oppositions to organization motions "violated this Court's orders and the Local Rules." (Defendants' Opposition To Ex Parte Application To File Plaintiffs' Genuine Statement of Issues [sic] Re Defendants' Motions (1) To Exclude Expert Testimony; and (2) For Separate Trial On Issues of Releases and Waivers; Request that Oppositions Be Stricken; hereinafter "Opp To Ex P", p.2,3.) I aid Mr. Greene and the Aznarans out of my own free will and my sense of right and wrong. If I am ordered by any lawfully constituted court to cease rendering such aid I will.

6. Ms. Bartilson states that I "[am] employed by Joseph Yanny on this very case." (Opp To Ex P p.4) I am not.

7. Ms. Bartilson states that for me "to now have switched [my] aid to Greene's office further taints all (emphasis in original) of the papers filed by Greene..." (Opp To Ex P p.5) It doesn't, because there was not and is not any taint..

8. Ms. Bartilson states that my aiding Mr. Greene "is grounds for [his] disqualification." (Opp to Ex P p.5) It isn't; but if this Court were so to order me, I will comply.

9. Ms. Bartilson suggests that Mr. Greene should be disqualified because I am "a paralegal formerly employed by defendant's lawyers." (Opp To Ex P p.5) I have never been employed by any organization lawyer.

10. Ms. Bartilson declares that "[she has] been informed by private investigators hired by [her] law firm that [I] was present at Ford Greene's offices many times from August 3, 1991 through at least August 21, 1991,

often for hours and days at a time." (Opp To Ex P p.9,para 4) I was outside the United States from August 3 until August 10, and not in Marin County where Mr. Greene's office is located until August 13, 1991. Filed herewith as Exhibit 2 are copies of my boarding passes for my flights from San Francisco to Johannesburg, South Africa on July 19 and 20, returning August 9 and 10.

11. Organization attorney William Drescher states that "[a]s [I am] Yanny's paralegal on this case, [my] new affiliation as an assistant to Ford Greene is truly outrageous." (Supplemental Memorandum In Support of Defendants' Motion To Dismiss Complaint With Prejudice; hereinafter "Supp Memo," p.4) I am not Mr. Yanny's paralegal on this case, and my affiliation with Mr. Greene is wholly peaceful, lawful, decent, helpful, respectful, and humorous.

12. Mr. Drescher states that "Yanny's involvement in this case continues, this time through a different "extension"--the improper activities of Yanny's paralegal, Gerald Armstrong." (Supp Memo p.5) I am not Mr. Yanny's paralegal. I answered his call for help during the period he was attorney of record in this case. I spent parts of two days on July 15 and 16 in Mr. Yanny's office during which time the only "work" I did was to write two declarations, one of which was also used by Mr. Greene. Mr. Yanny gave me no instructions or suggestions at any time to pass on to Mr. Greene or to anyone else involved in the Aznaran litigation. I am not Mr. Yanny's "extension" into this case. This organization's actions in attempting to deny their victims, the Aznarans, not only legal representation but support to the Aznarans' legal representatives is what is improper.

13. Mr. Drescher states that in 1984 I was "plotting against the Scientology Churches and seeking out staff members who would be willing to assist [me] in overthrowing Church leadership." (Supp Memo p.5) The

organization is not a church. Organization operatives David Kluge and Michael Rinder sought me out and gained my trust through a close friend whom the organization coerced into participating in an operation to attempt to entrap me. The organization operatives stated that they wanted to reform the organization and rid it of its criminal activities and they asked me to help. They said they wanted to save Scientology from its criminal leadership. They stated they were operating secretly within the organization for fear of, inter alia, being killed. They used my willingness to communicate and to help to attempt to enveigle me into the commission of a crime. When that failed, the organization simply twisted my refusal to participate in the suggested criminal act into further accusations.

14. Mr. Drescher states that "[t]he Church obtained information about [my]plans and, through a police-sanctioned investigation, provided [me] with the "defectors" [I] sought." (Supp Memo p.5) That the organization and its lawyers have told this lie so many times in so many jurisdictions over so many years has not made it any more true now than when they concocted the plot. I was videotaped. The videos are still embarrassing to me because I use foul language. What I say does not mean what the organization and its lawyers say it means. A private investigator (who, during this period threatened to put a bullet between my eyes) obtained a false authorization from an LAPD officer, who was himself suspended six months for his participation in the crime. The organization did not obtain information about my plans; it created the whole operation, including what my "plans" were to be.

15. Mr. Drescher states that "[o]n November 30, 1984 [I] met with one Michael Rinder, an individual whom [I] thought to be one of [my] "agents" (but who in reality was loyal to the Church)" (parens in original). (Supp

Memo p.5) I never considered Rinder my agent, nor did I consider that I had any agents. Rinder was not loyal to the "church." He was being operated by what the operatives called the "criminal leadership."

16. Mr. Drescher states that "the conversation [was] recorded with written permission from law enforcement." (Supp Memo p.5) It wasn't. The Chief of the LAPD denied authorizing the illegal operation, and the officer was suspended for his "permission."

17. Mr. Drescher quotes some out-of-context statements from my November 1984 meeting with Michael Rinder and avers that they meant that I was recommending that the group of "reformers" did not need "actual evidence of wrongdoing to make allegations in Court against the Church leadership." (Supp Memo p.5) My answer to Rinder is out of frustration because he appeared to be unable to understand that a complaint contains allegations, and the proof of the allegations is achieved through documentation and testimony, including even the well-known fact of the organization's long history of destruction of evidence, obtained through the litigation up to the end of trial. Elsewhere and in other conversations I discussed with the "reformers" what was actually known and documented, and which could be alleged in the complaint they insisted they wanted to file. I discussed with the "reformers" an inventory of criminal acts for which we knew the organization was responsible. They included burglary of state and federal offices, theft, obstruction of justice, blackmail, assault, civil rights violations, immigration fraud, tax fraud, attempted entrapment of Federal Judges, framing of my own attorney Michael Flynn, the use of preclear folder information against all Scientologists, all the acts which flowed from ""fair" game," and the use of their charitable corporation funds to carry out these criminal acts.

18. Organization attorney Eric Lieberman states that "the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it."" (Reply In Support of Defendants' Motion For Summary Judgment Based On the Statute of Limitations; hereinafter "Reply Stat Lim," p.2,3) This is not true. It is simply further exploitation of the fruits of the organization's covert actions against me: the illegal 1984 videotape regarding what the organization calls the "Armstrong Operation," Until I started to help Mr. Greene, I had nothing to do with the Aznaran case, which was filed in April 1988, except for my help to Mr. Yanny described in paragraph 12 above. I have given no facts to the Aznarans, nor any legal strategy. Besides the declarations I have written, all of which are now before this Court, I have written not one word in any of the filed papers. My help to Ford Greene in all of the papers recently filed has been in proofreading, copying, collating, hole-punching, stapling, stamping, packaging, labeling, air freighting and mailing. Mr. Greene and I have had several conversations during this period, some of which certainly concerned the litigation.

19. Mr. Lieberman states that "[i]t is clear that [my] influence and philosophy permeates the Aznaran's oppositions." (Reply Stat Lim p.3) I pray that that is true, because my philosphy in litigating against the organization is to tell the truth, have the faith that, no matter what lies the organization tells or operations it runs or how threatening the organization appears to be, truth will prevail; that, no matter how the organization

perverts the law, manipulates courts, testifies falsely, fights unfairly, wields religion as a sword and then a shield and abuses the legal process, justice will, if fought for honorably, triumph.

20. Mr. Lieberman states that "[o]n August 19, 1991 [I] admitted to one of defendants' counsel that [I] was at Greene's office "helping out."" (Reply Stat Lim p.3) I admitted no such thing. I was doing nothing even faintly improper which would require admission. I have been completely up front about my being in Mr. Greene's office and helping him. It is the organization which has skulked around and engaged in improprieties which it should admit to. I was so shocked when I discovered the organization operatives videotaping me on August 20 that I wrote Mr. Lieberman to protest the harassment. When I found the operation continuing on August 21 I again wrote Mr. Lieberman, and called his office, advised one of his associates of the operation and pleaded that it be called off. Copies of my letters are filed herewith as Exhibits 3 and 4. Mr. Lieberman has not answered my letters, has not mentioned them in his papers, which he signed on August 26, but has escalated the attack on my character and intentions. The operation has continued at least until August 30. Because of its form and nature, and because of my knowledge of organization operations and its philosophy of opportunistic hatred, I believe that this operation does not have as its major goal the proof that I am helping Mr. Greene. I believe its goal is intimidation and the assembly of intelligence information for future acts.

21. Mr. Lieberman states that "the real thrust of the Aznarans' Opposition is....the "just allege it" philosophy of Yanny's paralegal, Gerald Armstrong." (Reply Stat Lim p.33) I am not Mr. Yanny's paralegal, and "just allege it" is really the organization's litigation theory. L. Ron Hubbard

established the Guardian's Office and then the Office of Special Affairs to carry out his way of litigating.

> "In the face of danger from Governments or courts.....
> If attacked on some vulnerable point by anyone or anything or any organization, always find or manufacture (empasis added) enough threat against them to cause them to sue for peace." L. Ron Hubbard, Policy Letter of 15 August, 1960 "Dept of Govt Affairs." (Exhibit 5)

22. Mr. Lieberman states that "[my] "helping out" while the Opposition was concocted not only reveals the continuing taint of Yanny's involvement with this case, it establishes the guiding principle that resulted in [the] Opposition..." (Reply Stat Lim p.34) Not one thing, not the ability to proofread, photocopy, collate, hole-punch, staple, package, label, air freight or mail that I did in connection with the preparation of the Aznarans' oppositions, did I learn from Mr. Yanny. Not the ability to spot and confront organization operatives did I learn from Mr. Yanny. Not the ability to write, nor any fact or idea or word in any declaration did I learn from Mr. Yanny. I have been the target of "fair" game since I left the organization in 1981, and understand its philosphy. I know the organization's litigation theories and practices and I understand the psychopathology of L. Ron Hubbard and why he and his organization came to be viewed by Courts as paranoid and schizophrenic. There is nothing Mr. Yanny could possibly tell me which would surprise me or be additional to what I know about this organization. Mr. Yanny has provided no "guiding principle" whatsoever. The organization, by making and maintaining fair game as its guiding principle, established the guiding principle in this litigation. The fair game doctrine will dog the organization as long as there are honest and free men or until the

organization, not denies its existence, but completely and sincerely repudiates it.

23. Mr. Lieberman states that "[my] philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged." (Reply Stat Lim p.34) I have survived all the cross-examination and depositions by the organization, the documentation attacks by the organization, the character assassination by the organization, the use of my preclear folder information, the operations, the threats, the assaults, because truth is relevant. Although there undoubtedly is some memory loss over the past twenty-two years, and although there may even be some discrepancies in forty-seven days of sworn testimony, I have survived examination and cross-examination because I have, as much as is humanly possible, told the truth. I have said what I have known, known when I didn't know something, and stated my opinions as opinions. It is my opinion that one honest man can confront and vanquish a dishonest organization, no matter how big or how organized. Gratefully there are a few honest men to make the work lighter.

24. Mr. Lieberman states that "[t]he Aznarans' desperation to defeat this motion is so profound that they resort not only to the "just allege it" litigation philosophy of Joseph A Yanny's paralegal assigned to this case, Gerald Armstrong, but also to enlisting Armstrong's help in this cynical, say-anything-you-have-to approach to the truth." (Reply In Support of Defendants' Motion For Summary Judgment Pursuant To the First Amendment; hereinafter Reply First Am, p. 2) I am not Mr. Yanny's paralegal, and I am not assigned to this case. The desperation which resulted in the enlisting of my help had a purely logistical basis. Mr. Greene faced a mountain of organizational motions which required oppositions, and

no time to do them. He has no employees but a secretary who comes in a couple of evenings a week sometimes and sometimes on Saturdays. He needed simple office backup in the form of proofreading, photocopying, collating, hole-punching, etc. I am blessed with those simple office skills, and I have a knowledge of the subject matter and the cause in which Mr. Greene labors. I am aware of the awesome disparity of resources between Mr. Greene and the army of law firms, lawyers, paralegals, secretaries, and organizational legal machinery of his opposition. I am aware of the organization's policies and practices of neutralizing or eliminating the legal support of its enemies. How could anyone resist a call to help in this situation? It was not a conspiratorial thought that plunked me down over a year ago within running distance of the Hub Law Offices and sporting the same zip code. What It was was merely making the inevitable not only funny but easier.

25. Organization attorneys have made much of the fact that Joseph Yanny has been enjoined from representing me in litigation adverse to the organization. (Op To Ex P p.10; Supp Memo p.4) He is, of course, its former attorney. I have been working with Mr. Greene since August 17. I have not seen nor heard one word of Mr. Yanny's influence in this case, beyond the fact that the organization just alleged it.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on September 3, 1991 at Sleepy Hollow, California.

EXHIBIT 1

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

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"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

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amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

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for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and

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settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other

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similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the

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settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose

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concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

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85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make

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himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

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L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

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incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

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all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement,

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representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

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jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

EXHIBIT 2

Flight / Vuelo / Vol / Flug: PA 072
Date / Fecha / Date / Datum: 19JUL
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ARMSTRONG GMR
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CONNECTING FLIGHT/DATE/BOARDING POINT

ARMSTRONG [illegible]
NAME - NOM - NOMBRE - NAME
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

BOARDING PASS

00 28

EXHIBIT 3

Eric M. Lieberman, Esq.
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
740 Broadway, Fifth Floor
New York, NY 10003-9518

August 21, 1991

Dear Mr. Lieberman:

Organization operatives filmed me yesterday at least in the following situations:

1. Talking to an employee of attorney Ford Greene, in the doorway to Mr. Greene's office, at 711 Sir Francis Drake in San Anselmo, California.

2. Walking outside Mr. Greene's office.

3. Pulling on a T-shirt outside Mr. Greene's office.

4. Running outside Mr. Green's office.

Whilst I was on foot I was also pursued by one of the operatives driving a white Cadillac.

The driver of the Cadillac was later confronted by Mr. Greene who also recorded the licence number of Cadillac and the other vehicle being used by the operatives.

I doubt that you find it hard to believe that I consider the organization's operation has as its major target in the eval known but to two or maybe three or even four the assassination of Gerry Armstrong.

I am not unmindful of your use of the earlier videotape event in your Petition For Rehearing filed in the Armstrong appeal (n. 1, p. 6, second edition; n. 2, p.5, first edition).

There was no reason to videotape me as proof that I was associating with Ford Greene. I had spoken the day before to two of your fellow org lawyers, Laurie Bartilson and Bill Drescher, and two men from SO legal liaison staff, Howard Guttfeld and August Murphy, and from none of whom had I withheld the fact that I was helping Mr. Greene. None of them were not aware that I was speaking to them from Mr. Greene's office because all of them except for Mr. Murphy called Mr. Greene's office and I had spoken to

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them when I answered Mr. Greene's telephone to take messages for him while he was out of his office. Mr. Murphy spent some time in Mr. Greene's office and we spoke for a few minutes. I am quite certain he left with the impression that I was helping Mr. Greene, and specifically in the Aznaran case since, in addition to my saying so, he did observe me carrying into Mr. Greene's office two boxes containing the mega-copies of the two Oppositions to Summary Judgment Motions (Statute of Limitations and First Amendment) and related documents, and did hear me lament that his organization had cost Mr. Greene that very day over seven hundred dollars in copying costs.

I did note the sophrosynial shift in the two writers of the second edition of the Petition For Rehearing. I imagine the organization's idea of having Marty talk to me is not in the works.

I'm sure you understand why I do help those who need it, and why people who litigate with the organization need it. And I'm sure you know how utterly unbiased I am in that all I oppose are antisocial policies and activities. In that Scientology denies that any of its policies or activities are antisocial I am not opposed in any way to what Scientology says it is and says it does. I am only opposed to antisocial policies and practices.

It is really a matter of logistics. Your organization scares people. It scares me. There are therefore few people willing to do what needs to be done regarding the organization. I am simply willing to do what I can no matter how scary it is. If there were not so many people afraid of your organization I wouldn't need to do what I can to help.

As you know, the organization has at times terrorized me, it has a policy of revenge, its present owners have a personal hatred for me, and it has acted with its fair game doctrine directing its attitude and acts toward me since and in violation of the settlement. Obviously, then, it is in every way reasonable for me to associate with and help those who have the courage to oppose the organizational beast.

Then there's the religious argument. And its legal corollary: if antisocial acts are religious, then so must be any opposition to antisocial acts.

Then there's the matter of theology.

All of which brings me to the matter at hand. You know about compartmentalization, PIs, cutouts, lies and paranoia. There probably are things which can be done to bring the organization's self-destructive

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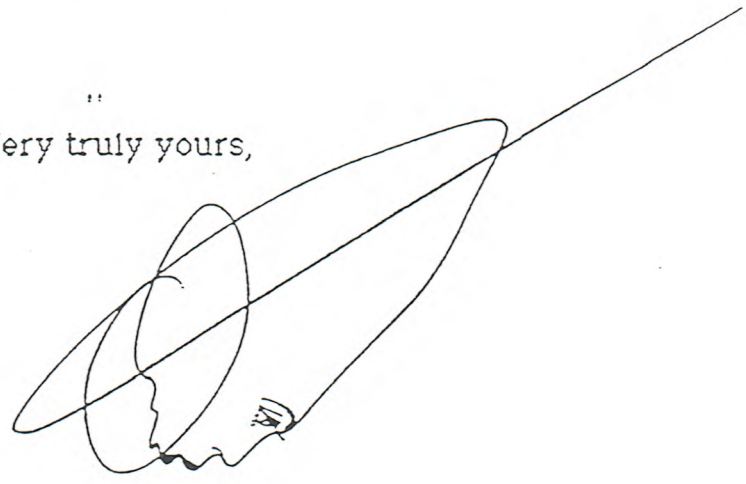
insitutionalized hatred to a peaceful conclusion. Although you exhibit in your most recent descriptions of me and in your willingness to go beyond mere factual twists, a new and greater animus,I still have an idea that you can do something.

I trust you'll reply.

Very truly yours,



Gerry Armstrong
(415)456-8450

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EXHIBIT 4

Eric M. Lieberman, Esq.
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
740 Broadway, Fifth Floor
New York, NY 10003-9518

August 22, 1991

Dear Mr. Lieberman:

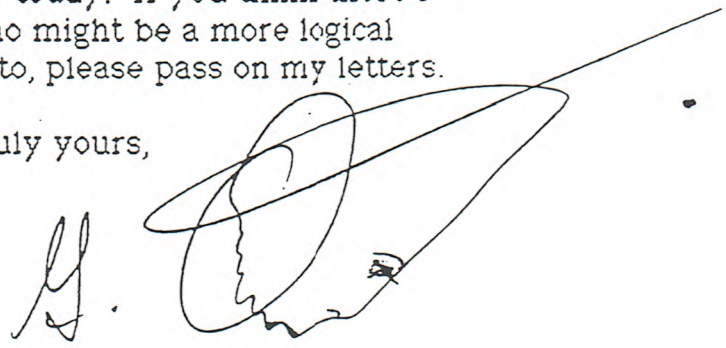
If there be any doubt about the veracity of the facts stated in my letter of yesterday please add these.

Yesterday, after writing you, I returned to Mr. Greene's office. At one point, in the late afternoon while standing outside talking to Mr. Greene, he noticed and pointed out a car perhaps a hundred yards away, across Sir Francis Drake and up a small hill. In it sat a man who at my first glace appeared to be watching us. I ran across SFD, up the hill and approached the car. I could see the man lower an object out of sight. I raised my hands, palms toward him to let him know I meant no harm and was unarmed; in case I had erred in my assessment that the man in the car was an operative, and I was approaching head on at flank speed an innocent innocently eating his dinner. He rolled up the window as I neared. I got very close and looked in the driver's window. He had dark hair, thick, a wiry appearance; i.e., his hair, somewhere in length between yours and mine, and a thick mustache. I couldn't smell his breath because, as I said, the window was rolled up, but I was close enough I imagined it. Height ± 6'. On the front seat beside him were, inter alia, a video camera and a clipboard and some lawyers' yellow pad sheets. His firearms were clearly out of sight. On the top sheet in pen were written a page of entries with a progression of times beside the entries. I tried to make them out; i.e, the entries, but I was, as you can imagine, freaking out, my pulse was up around 150; not from the short run up the hill but the terror these confrontations strike in me; from a rest rate of + 48; and the driver, after a few second comm lag started the car and began to drive away. I put my body in front of the car because I wanted to get someone from law enforcement somewhere to do something but he let me know through unmistakable gestures that my body was not about to stop his forward progress so I, and I think in this case wisely, stepped aside and let him flee. I did run alongside the car and was near it when Mr. Greene arrived across SFD and also observed the driver and recorded the number from the car's muddied licence plate. When last seen his weapons were still out of sight; nor have I seen any more of him.

You might recall that when org operatives began their summer of 82 psycho-terror campaign I was able to detain the yellow VW by putting my body in front of it. Times and personalities have changed, the new fearless leader shoots photos of innocents with his 45, and for some totally baffling, unreasonably unreasonable reason you guys hate me. And you all sure act as if a sense of humor isn't a gift from God; and it is. Various people, on order from Hubbard or Miscavige, have tried , inter alia, libel, slander, threats, muscle, sworn false witness, frames, blackmail and betrayal. You can understand my concern at knowing that the top, the top operatives and the legal cutouts are chewing over the acts called for to satisfy the next gradient, while not even bothering to keep in mind what a flaming SP I am and what a threat I am to the future of mankind.

You will have probably received by now a report from Terry Gross in your office concerning my call to you of earlier today. If you think there's someone else connected to the organization who might be a more logical person for me to communicate these concerns to, please pass on my letters.

Very truly yours,



Gerry Armstrong
(415)456-8450

EXHIBIT 5

HUBBARD COMMUNICATIONS OFFICE
37 Fitzroy Street, London, W.1

HCO POLICY LETTER OF 15 AUGUST 1960
Re-issued from Sthil

Assn Secs
HCO Secs

DEPT OF GOVT AFFAIRS

(Cancels any previous directions to set up a Special Zone Dept)
(This Policy Letter is mandatory all Central Organizations)

There shall be established on a board level and outside the structure of the Central Org and HCO but under the board of HASI Ltd, a new department to be called "The Department of Government Affairs".

More and more, as governments disintegrate under the threat of atomic war and communism, central organizations have had to give high executive time to governmental affairs to the great loss of the organizations themselves. The enturbulence entered into Scientology activities by legal matters, tax matters, and matters of assisting governments to maintain stability, has sapped our time and fixed our attention to our own loss.

Now to remedy this situation, I wish to contain and cordon, in a military sense, this incursion and to prohibit utterly and completely such entrance (of these matters or our own project for governments) into Central Org or HCO comm lines. In other words, Central Orgs and HCOs are run by, for and as Scientology service and activity units and the special Department of Government Affairs shall handle other matters and specifically deny such non-Scientology matters entrance into organizational comm lines.

The Department of Government Affairs shall be headed and directed with a minimum of personnel and shall not be able to call upon the personnel of the Central Org or HCO for further assistance than the relay of communications.

The Director of Government Affairs shall be a fully qualified person of good judgement subject to control of the Board of Directors and shall be subject to the advices and directions of the Board and the HCO and Assn Secretary. Only Washington and South Africa are excluded from supervision of the Dept by the Assn Sec, Org Sec and HCO Sec. In all other offices the Director of Government Affairs shall be subordinate to the Assn Sec and HCO Sec.

Under this department comes the corporation's solicitors, attorneys, chartered accountants and any attorney or accountant hired directly by the corporation for outside legal or tax or filing purposes.

The allotment and issue of shares comes under this department, but the actual invoicing and banking shall be done as always by the Dept of Accounts or, for HCO, by the HCO Secretary.

All contracts, filings with the government, all tax reports and their preparation, corporation minutes, annual meetings, legal papers, suits against and by the corporation, whether HASI Ltd or HCO Ltd, all legal investigatory work and detectives, all contacts with government agents, bureaus and departments, all assistance to governments, messages to governments, handling answers from governments or courts shall be cared for by the Department, whether to advance or protect Scientology or its corporations by government or legal channels.

All legal documents and the Valuable Document files for HCO and HASI shall be kept by the Department in a proper safe in accordance with previous rules written for the keeping and handling of valuable documents.

All share sales reports and all legal, governmental and corporation reports to be made to the boards shall be made to it by this Department.

No shares may be advertised or issued save with the approval of this department.

No contracts, purchases or mortgages may be undertaken without the approval of this Department and then only by the action of this Department.

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It is clearly understood that the Department shall not undertake financial management for the Central Org or HCO nor may it direct the Central Org or HCO on purely Scientology affairs or Scientology dissemination except where these may impinge directly upon the government, and even then this Department is enjoined from forcing government laws or rulings upon the Central Org or HCO by threat of danger or ominous advices, nor may the Department employ either solicitors nor accountants who specialize in ominous advices to the Orgs since the Orgs could be discouraged or impeded by such.

The object of the Department is to broaden the impact of Scientology upon governments and other organizations and is to conduct itself so as to make the name and repute of Scientology better and more *forceful*. Therefore defensive tactics are frowned upon in the department. We are not trying to make the Central Orgs and HCOs "be good". We are trying to make their reach more secure and effective. Only attacks resolve threats.

In the face of danger from Govts or courts there are only two errors one can make: (a) do nothing and (b) defend. The right things to do with any threat are to (1) Find out if we want to play the offered game or not, (2) If not, to derail the offered game with a feint or attack upon the most vulnerable point which can be disclosed in the enemy ranks, (3) Make enough threat or clamor to cause the enemy to quail, (4) Don't try to get any money out of it, (5) Make every attack by us also sell Scientology and (6) Win. If attacked on some vulnerable point by anyone or anything or any organization, always find or manufacture enough threat against them to cause them to sue for peace. Peace is bought with an exchange of advantage, so make the advantage and then settle. Don't ever defend. Always attack. Don't ever do nothing. Unexpected attacks in the rear of the enemy's front ranks work best.

Never put the organization on "wait" because of courts or other matters. It's up to the Department to make the actions of HCO Secs and Org Secs *right*, not enjoin right actions on the HCO and Org Secs.

To win we must have treasure and verve. If a Central Org and HCO function perfectly as service units then treasure and consequent security for the further advance are to hand. If the Department operates with verve and elan, even with rashness, it will afford a screen behind which organizations can work.

Example: BMA attacks Scientology in Australia via the government. Answer: throw heavy communication against the weakest point of the BMA–its individual doctors. Rock them with petitions to have medical laws modified which they are to sign. Couple the BMA attack with any group hated by the government. Attack personally by threats or suits any person signing anything for the BMA. Slam the matter into politics, advance a bill into parliament that strips the BMA of all legal rights by opening healing to all. Make the attack by the BMA look ridiculous. Attack medical practices. Investigate horrible practices loudly. (*Always* investigate loudly never quietly.) Make the distinct public and governmental impression and BMA impression that they've run into a barrage of arrows or electronic cannon and that continued attack by them will cause their own disintegration. As all this is being done on a thought or idea level the restimulation of their engrams results in the total impression that they are surrounded by their own dead and the battery may fire again at any minute. And if one makes in writing not one slanderous or libelous statement, there is no defense by them. This example is patterned on what just happened and what we did in Australia where we are winning strongly.

The personnel of the Department should be freed of past track legal and governmental overts by the HGC using evening auditing. This is a must or the Department will otherwise attract attacks. Further, the higher the department personnel is raised on "control" through running help, the less action will have to be undertaken by it and the more it will actually accomplish without violent action.

The goal of the Department is to bring the government and hostile philosophies or societies into a state of complete compliance with the goals of Scientology. This is done by high level ability to control and in its absence by low level ability to overwhelm. Introvert such agencies. Control such agencies. Scientology is the only game on Earth where everybody wins. There is no overt in bringing good order.

The offices of the Department, so far as is possible, should be so situated as to bring no government traffic into the main avenues, comm lines or halls of the Central

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Organization or HCO or so as to divert it to the maximum extent from said avenues, comm lines and halls.

The following personnel appointments are made, conditional to acceptance, as Directors of Government Affairs:

United States:	Marilynn Routsong	Los Angeles:	Dick Steves
South Africa:	Jack Parkhouse	Australia:	Denny Gogerly
London:	George Hay	New Zealand:	Steve Stevens.

In the United States and South Africa the head of the Department of Government Affairs shall be also Trustee or Area Director of the Central Organization while the Org Sec and Assn Sec shall not be, but will be officers of the corporation.

This policy letter and these appointments are prompted by the following facts:

1. My own traffic on government legal affairs is far too heavy and I need help of magnitude on a continental level.
2. HCO Secs and Assn Secs are having difficulty holding down their Orgs and the field because of the time demanded by government affairs.
3. The activity will get heavier rather than lighter.
   (a) The deterioration of government order is accelerating with consequent confusion in all related affairs;
   (b) Increasing amounts of order must be maintained by us at a governmental level against the possibility of finding our areas without governments.
4. We are about to file HASI Ltd and HCO Ltd in all areas with the attendant heavy legal and governmental action necessary.
5. We are about to arrange for the release of and the issue of over half a million pounds of shares to the public, thus making heavy demands on legal and government lines.
6. We are about to finance and erect various media of communications, such as radio stations, on the various continents and this will require enormous amounts of liaison and action in such a department.
7. We are about to finance and find new quarters in the United States and such activities come under the new Department.
8. Due to new clearing techniques, our sphere of control is widening. This is purely a case phenomenon, but will be felt heavily by Orgs in the future. It is necessary to provide comm lines for this widening of influence.

LRH:js.gh.cden

L. RON HUBBARD

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex

HCO POLICY LETTER OF 22 AUGUST 1960

All Orgs
Sec EDs

DEPT OF GOVT RELATIONS

The Dept of Govt Relations may not use Org personnel for typing and mailing, and may only use Org personnel for reception, switchboard and despatch purposes.

Where numbers of mailing pieces are envisioned or where numbers of outside letters are to be sent by the Dept of Govt Relations, these may be done either by outside agencies or by a full or part time secretary to the Dir of G R. The necessary high appearance of G R letters and mailing pieces does not admit the use of mimeo and G R may not use organizational mimeo machines.

LRH:js.rd

L. RON HUBBARD

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DECLARATION OF GERRY ARMSTRONG REGARDING ALLEGED "TAINT" OF JOSEPH A. YANNY, ESQUIRE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE ATTACHED SERVICE LIST

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: September 4, 1991

FORD GREENE, ESQUIRE
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

AZNARAN vs. SCIENTOLOGY

Service List

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Pleasanton, California 94588

EARLE C. COOLEY
Cooley, Manion, Moore & Jones, P.C.
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Attorneys for Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Attorneys for Defendant
AUTHOR SERVICES, INC.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTERCLAIMS	CASE No. CV 88-1786 JMI(Ex) DEFENDANTS' OPPOSITION TO EX PARTE APPLICATION TO FILE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; DECLARATION OF LAURIE J. BARTILSON DATE: To be determined TIME: To be determined COURTROOM: Hon. James M. Ideman

Defendants oppose plaintiffs' Ex Parte Application to File Plaintiffs' Opposition to Defendants' Motion to Dismiss Complaint and request that these late-filed papers be stricken.

Not content to follow this Court's explicit orders and the Local Rules, Plaintiffs have elected themselves custodian of this Court's calendar. They were given until August 19, 1991 in which to file their oppositions to pending motions. They have unilaterally taken until, at last count, August 29.

Plaintiffs' abuses to this Court's orders is becoming monumental. A brief rundown of those abuses is all that is required to show that plaintiffs are not entitled to any relief from this Court and that this Court should not only reject plaintiffs' most recent late-filed opposition, but should grant as unopposed defendants' motion to dismiss.

1. In just the past eleven days, plaintiffs have violated this Court's orders and the Local Rules by:

(a) Filing oversized oppositions to defendants' two summary judgment motions. These oppositions were numerated to be 40 and 50 pages in length, but were accompanied by a 53-page "Appendix of Fact," thus making the actual size of the two opposition papers 93 and 103 pages;

(b) Attempting to late-file Statements of Genuine Issues of Fact on Friday, August 23, 1991, giving defendants no opportunity to respond to those Statements with defendants' replies, originally due to be filed on Monday, August 26, 1991;

(c) Failing to oppose in a timely fashion four other pending motions;

(d) Failing to file a Pretrial Conference Memorandum of Contentions of Fact and Law, due with the Court on August 26, 1991 pursuant to Local Rule 9.5; and

(e) Unilaterally taking until August 29 to oppose plaintiffs' motion to dismiss, notwithstanding the Court's explicit instructions that plaintiffs' papers be filed by August 19, three days after the date he originally asked for.

2. Plaintiffs' counsel, Ford Greene, was required to meet with defendants' counsel on August 7, to comply with the Pre-Trial Order. He refused to show up, using as an excuse that a new lawyer was going to join him in the case. Nevertheless, that lawyer has yet to be heard from and Greene has still not taken a single step to comply with the Pre-Trial Order.

3. This Court disqualified plaintiffs' former counsel, Barry Van Sickle, as an extension of Joseph Yanny's improper involvement in this case, so Yanny himself decided to appear and the Court made fast work of him. Now Yanny's paralegal and long-time Church adversary, Gerald Armstrong, is on loan to Ford Greene and is not only working diligently on this case, but is furnishing Greene with declarations. As is set forth in the attached declaration of Laurie J. Bartilson and the accompanying exhibits, Armstrong was hired by Joseph Yanny to act as Yanny's paralegal on this very case. [Ex. A, Declaration of Laurie J. Bartilson; Ex. B, Transcript of

Hearing of August 6, 1991 in Religious Technology Center v.Yanny.] Armstrong's presence in Greene's office alone further taints all of the papers filed by Greene, and is grounds for disqualification of Greene himself as well. See, In re Complex Asbestos Litigation (1991) 91 D.A.R. 8849 (requiring disqualification of plaintiff's law firm for the hiring of a paralegal formerly employed by defendant's lawyers).

4. Plaintiffs' stories concerning Greene's discharge, Yanny's appearance and Greene's reappearance shift from day to day, depending on which motion is being addressed:

(a) In plaintiffs' Ex Parte Application for an Order Continuing Defendants' Summary Judgment Motion, filed on July 2, 1991, plaintiffs first, through Joseph Yanny, told the fanciful story of how Yanny came to represent plaintiffs, falsely claiming that a one-time nuisance value settlement offer on the part of defendants somehow precipitated Mr. Greene's dismissal. [See, plaintiffs' Ex Parte Application for an Order Continuing Defendants' Summary Judgment Motion, July 2, 1991]. That story was repudiated by plaintiffs one month later in Plaintiffs' Notice of Association of Trial Counsel John Clifton Elstead, in which the Aznarans claimed that they had dismissed Mr. Greene because they felt "sufficiently concerned about Mr. Green's ability to handle and maintain the trial" of their case that they replaced him with themselves as pro se litigants. [See, Declarations of Vicki Aznaran and Richard Aznaran filed in support of Plaintiffs' Notice of Association of Trial Counsel John Clifton Elstead, August 1, 1991, para. 4.] Now, in the Opposition to the Motion to Dismiss lodged ten days

late which Greene seeks leave to file, Greene has found it expedient to parrot Yanny's lies concerning plaintiffs' shifting of counsel.

(b) Vicki Aznaran, formerly one of the highest ranking officials in the ecclesiastical structure of Scientology, claims brainwashing when the goal is to avoid the statute of limitations bar to her claims. [See, Plaintiffs' Opposition to Defendants' Motion for Summary Judgment on the Grounds of the Statute of Limitations.] On the other hand, she claims to be so knowledgeable, canny, well-informed and self possessed that she couldn't possibly learn anything new from Joseph Yanny when the goal is to avoid answering for the most prejudicial and egregious sell-out of clients known to the legal profession. [See, Defendants' Opposition to Motion to Dismiss at p. 4].

What we have here is anarchy. Plaintiffs and their current counsel, Ford Greene, their shadow counsel, Joseph Yanny, and Yanny's paralegal, Gerald Armstrong make up their own rules as they go along, sneer at the Court's rules and orders, and fabricate whatever story they consider necessary to pervert the law and the orderly administration of justice at any given moment.

The moving party is required to present his reasons for seeking the ex parte application, and a memorandum of points and authorities in support thereof. The burden is on the moving party to demonstrate good cause if he seeks to have more time in which to file papers. Local Rule 1.18. Plaintiffs have done neither. Instead, they offer a declaration of their counsel, which states merely that he "is human," as if that invocation

somehow excuses him from compliance with this Court's orders.

Greene's complaint that he has been unable to follow this Court's orders, even with the improper aid of Gerald Armstrong, is thus a completely hollow argument. It is plain that plaintiffs and their counsel have nothing but contempt for this Court, its Rules and its Orders.

This is merely the latest episode in plaintiffs' "persistent pattern of abusive conduct," Chism v. National Heritage Life Ins. Company, 637 F.2d 1328, 1331 (9th Cir. 1981), which defendants and the Court have tried in vain to cure. The schedule set by the Court was clear and concise, plainly designed to permit the Court to rule on pending matters prior to the Pretrial Conference, now set for September 16, 1991. Plaintiffs' refusal to comply with this clear order, and instead late-file oppositions willy-nilly, is inexcusable.

Local Rule 7.3.3 authorizes this Court to strike the attempted filing of any late-filed documents and disregard it for all purposes. The equities of this case cry out for just such a result here. Defendants have complied with the Rules and this Court's orders, suffered irreparable harm while plaintiffs hired defendants' former counsel, and have had their dispositive motions delayed for weeks through plaintiffs' machinations. Plaintiffs and their counsel have, however, disobeyed order after order of this Court, refused to follow the Local or Federal Rules, and commanded the Court to march to their schedule and accept whatever they chose to file, whenever they chose to file it. Plaintiffs cannot - must not - be rewarded for this misconduct. Defendants respectfully urge

this Court to examine plaintiffs' conduct, weigh the obvious equities, deny plaintiffs' ex parte application, and strike plaintiffs' late-filed oppositions to defendants' motions.

Dated: August 30, 1991

Respectfully submitted,

QUINN, KULLY AND MORROW

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.

BOWLES & MOXON

By: _____
Laurie J. Bartilson

Attorneys for Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

WILLIAM T. DRESCHER

COOLEY, MANION, MOORE & JONES, P.C.

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CHURCH OF SPIRITUAL TECHNOLOGY and RELIGIOUS TECHNOLOGY CENTER

MICHAEL LEE HERTZBERG

BERRY & CAHALAN

Attorneys for Defendant
AUTHOR SERVICES, INC.

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I know Armstrong, as I attended his deposition in another case in which I am also counsel. He is a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. I have been informed by private investigators hired by my law firm that Armstrong was present at Ford Greene's offices many times from August 3, 1991 through at least August 21, 1991, often for hours and days at a time. When my courier went to Greene's offices on August 19, 1991 to pick up papers in this case, he observed Armstrong sleeping on the floor in the office.

5. Exhibit 1 to the Reply in Support of Defendants' Motion for Summary Judgment is a true and correct copy of a transcript of an August 6, 1991 hearing in the case of

Religious Technology Center, et al. v. Yanny, Case No. BC 033035. In that case, Yanny was preliminarily enjoined by the Court from representing either the Azarans or Armstrong.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this 30th day of August at Los Angeles, California.

LAURIE J. BARTILSON

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Church of Spiritual
Technology
419 North Larchmont, Suite 162
Los Angeles, CA 90004

Person to Contact:
Mr. M. Friedlander
Telephone Number:
(202) 566-6701
Refer Reply to:
E:EO
Date: JUL 8 1988

Employer Identification Number: 95-3781769
Form: 1120
Tax Years: All Years

Dear Applicant:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reasons:

1. You have failed to establish that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. You have not demonstrated that your activities and purposes conform to exempt purposes and activities as required by section 501(c)(3) of the Code.

You are one of a number of organizations which were created pursuant to a reorganization of the Church of Scientology which took place in 1981 and 1982. The reorganization was undertaken after the Service revoked the exempt status of the Church of Scientology of California, the former "Mother Church" of the denomination. The basis of the revocation was that the California church was an ordinary commercial enterprise, the Church's income inured to L. Ron Hubbard, founder of the Scientology religion, and the Church had violated public policy by conspiring to impede the Service from assessing and collecting taxes which were lawfully due. Church of Scientology of California v. C. I. R., 83 T.C. 381 (September 24, 1984). The revocation was sustained by the Tax Court and upheld by the Court of Appeals for the Ninth Circuit. 823 F. 2d 1310 (9th Cir. 1987).

An earlier case involving a Scientology organization had also resulted in a finding of private benefit to Mr. Hubbard and members of his family. Founding Church of Scientology v. U.S., 412 F. 2d 1197 (Ct. Cl. 1969), cert. den., 397 U.S. 1009 (1970).

In the Church of California case, cited above, the Tax Court described how the Church attempted to frustrate the Service's efforts to examine its financial affairs. The Church maintained no books or journals to record

and systematize its financial transactions. Therefore, the examination had to proceed on the basis of millions of separate checks, invoices, and disbursement vouchers. The Church's accountant saw to it that these documents were provided in no semblance of order. He advised another church to "give the IRS agent a bunch of records in a box in no semblance of order, to place the agent in a dark, small, out-of-the-way room, [and] to refuse to give practical assistance locating records." In the face of such tactics, the IRS spent approximately two years in an unsuccessful attempt to audit the Church's 1968 and 1969 financial operations.

In addition to the above tactics, the Church knowlingly and purposely misled the IRS concerning extensive operations it conducted in the United Kingdom. It concealed from the examiners the fact that it regularly received debit advices from foreign banks in lieu of canceled checks. It never produced canceled checks from some of its accounts which it maintained in the name of another corporation. When checks were produced, they were sometimes detached from their stubs. Boxes of records were mislabeled. The Church intentionally delayed in providing requested records and in some instances it never provided the records at all.

In order to establish whether the reorganized Church of Scientology was operated exclusively in furtherance of exempt purposes, we sought to obtain detailed information from you and from the other newly created entities which had filed applications for recognition of exemption. Although some information was initially provided, the information was incomplete or partial. Eight of the organizations eventually withdrew their applications without providing the information we had requested.

While the applications were pending, witnesses gave testimony in court cases involving churches of Scientology. See Church of Scientology of California v. Gerald Armstrong, No. C 420153 (Calif. Super. Ct., July 20, 1984); Founding Church of Scientology of Washington, D.C., Inc., et al. v. Director, Federal Bureau of Investigation, et al., 802 F. 2nd 1448 (1985), cert. den., 56 U.S.L.W. 3231 (October 6, 1987). The testimony was to the effect that L. Ron Hubbard continued to control the Church of Scientology for his private benefit. Witness testimony in the Armstrong case alleged that the project known as Mission Corporate Category Sort-Out (MCCS) had been undertaken by the Church of Scientology of California in 1980. The alleged purpose of the MCCS project was, according to the testimony of Laurel Sullivan, to devise a new organizational structure to conceal L. Ron Hubbard's continued control of the Church of Scientology. In the Founding Church v. Director, F.B.I. case, to which the Service was a party, the government successfully argued that L. Ron Hubbard should be required to appear and be deposed because he was a managing agent of the Church. Mr. Hubbard did not appear and the case against the government defendants was dismissed with prejudice.

Church of Spiritual Technology

We asked the remaining applicants who had not withdrawn their applications to comment on the matters noted in the Armstrong and Founding Church v. Director, F.B.I. cases. They responded that the testimony related to other organizations and time periods, attacked the credibility of the witnesses, and stated that L. Ron Hubbard did not hold any position of control in any church of Scientolgy even though he was still revered as the founder of the religion. We were told that the present corporate structure had been designed after those responsible for the MCCS project had been dismissed from the church and that the work done on the MCCS project was not considered or consulted in designing the new organizational structure presently in place. At the same time, we were furnished for the first time a chart showing levels of authority and departments within the new organizational structure. One of the departments, the Commodore's Messenger Organization (International), exists within the corporate structure of Church of Scientology International, the new "Mother Church" of the denomination. According to allegations made in the Armstrong case, L. Ron Hubbard controlled the church through the Commodore's Messenger Organization utilizing David Miscavige, Pat Broeker and Anne Broeker to carry out his orders. David Miscavige, Anne Broeker, and Lyman Spurlock were the original trustees of Religious Technology Center. Mr. Miscavige enjoys a position of influence in the reorganized Scientology structure which we have been informed derives from "moral authority" rather than from any official position in the corporate structure. Lyman Spurlock is President of Church of Spiritual Technology and, along with Mr. Miscavige, is an employee of Author Services, Inc. Author Services, Inc., is a for-profit corporation formed to provide services to L. Ron Hubbard in connection with exploitation of patents and copyrights which Mr. Hubbard owned.

On January 7, 1986, we issued an initial adverse ruling on your application. You submitted a written protest to our initial adverse ruling. In your protest we learned for the first time of the existence of still other organizations which were related to the new Scientology operating structure. Following your protest conference, which was held in January, 1987, we asked you to provide more detailed information about these new "international" organizations, including International Association of Scientologists, International SOR Trust, SOR Management Services, Ltd., Scientology International Missions Trust, and International Scientology Religious Trust. In a letter dated November 24, 1987, we noted that you had previously agreed to supply that information to us. However, you did not supply the information.

In support of the protest to our initial adverse ruling, we were supplied with copies of affidavits dated December 4, 1986, from Gerald Armstrong and Laurel Sullivan. Ms. Sullivan was the person in charge of the MCCS project. The affidavits state that the new church management "seems to have returned to the basic and lawful policies and procedures as laid out by the founder of the religion, L. Ron Hubbard." The affidavits conclude as follows:

Church of Spiritual Technology

"Because of the foregoing, I no longer have any conflict with the Church of Scientology or individual members affiliated with the Church. Accordingly, I have executed a mutual release agreement with the Church of Scientology and sign this affidavit in order to signify that I have no quarrel with the Church of Scientology or any of its members."

The history of Scientology's operations detailed in the Church of California case includes a lack of adequate financial records, public policy violations, deceptive practices and the maintenance of enemies lists against whom any actions, however illegal, were justified. The California case also demonstrates inurement of net earnings and benefit to the private interest of Mr. Hubbard, operations that primarily furthered commercial purposes conducted amid continuous representations denying control by and benefit to Mr. Hubbard, and a tenacious denial of the actual state of the organization's affairs in the face of overwhelming evidence establishing the true nature of the organization's operations. More recently, attempts to conceal Mr. Hubbard's ongoing control of Scientology were alleged in the Armstrong case. Utilizing testimony any witnesses from the Armstrong case, the government successfully argued that Mr. Hubbard was a managing agent of the Church of Scientology as late as 1984. See the Founding Church v. Director F.B.I. case, cited earlier.

The events detailed in these court cases, which span almost the entire period of Scientology's history, create an inference that Scientology, even after reorganization, is not operated exclusively for exempt purposes. The fact that Mr. Armstrong and Ms. Sullivan elected to settle their personal differences with Scientology does not detract from the relevance of the statements they previously made concerning Mr. Hubbard's use of Scientology organizations to serve his private interest. Our experience with your organization similarly reflects a continuation of the pattern of inurement and benefit to the private interest of Mr. Hubbard, operations that primarily further commercial purposes, and denials of control by and benefit to Mr. Hubbard for periods prior to his death despite contrary judicial and Service findings. Blanket denials that Mr. Hubbard personally profited from his position of influence in Scientology and assertions that your operations exclusively further exempt purposes do not dispel this inference.

Mr. Hubbard died on January 24, 1986. But, his death did not alter the history of Scientology's prior operations or make available complete information about your actual operations. Moreover, the same individuals who controlled Scientology operations prior to Mr. Hubbard's death, and who participated in arrangements which resulted in inurement and private benefit, continued to control your operations and those of the other top level Scientology organizations after Mr. Hubbard's death. Thus, the possibility of inurement and private benefit continued after Mr. Hubbard's death and more complete information about your operations and financial affairs was required to assure that your operations had changed to eliminate any further private benefit.

Church of Spiritual Technology

For the reasons explained above, in a letter dated March 17, 1988, we proposed to review your books of account and records and those of Church of Scientology International and Religious Technology Center. As explained in our letter of March 17, 1988, the purpose of this review was twofold. First, to determine the integrity of your financial and accounting systems so we could verify that the information you had provided was accurate. Second to verify that no part of your net earnings inures to the benefit of any private shareholder or individual and that there is no other disqualifying activity.

Church of Spiritual Technology, Church of Scientology International, and Religious Technology Center agreed to participate in the financial reviews pursuant to the letters of March 17, 1988. Church of Spiritual Technology, Religious Technology Center and Church of Scientology International informed us by letter dated June 24, 1988, that they would no longer participate in the review. The refusal to continue the review, concentrating on those areas of concern, and their failure to fulfill the terms of the March 17, 1988, agreement, prevents us from concluding that Scientology's operations have changed and that activities previously found to be disqualifying for purposes of section 501(c)(3) of the Code have been discontinued. Therefore, we conclude that you have not established that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code.

2. <u>You are operated for a substantial non-exempt commercial purpose</u>.

In our initial adverse ruling of January 7, 1986, we concluded that you were operated for a substantial non-exempt commercial purpose because your activities assisted other organizations in maximizing sales of goods and services associated with the practice of Scientology.

In your protest and subsequent submissions you argued that your activities were engaged in for religious rather than commercial purposes. You contended that the provision of goods and services for a fee, which is characteristic of Scientology, was a permissible means of providing funds necessary for Scientology to support its operations, provide reserves for renovations and expansion, and to attract potential new members to the religion.

We have carefully considered your arguments, but fail to see that sales of goods and services for a fee by Scientology organizations under policies and directives which emphasize sales and profits does not result in a primary purpose of engaging in activities similar in nature to those of an ordinary commercial enterprise, in which profits are the primary goal, rather than in advancing religious purposes. The fact that the fees provide a source of funds for operating expenses and future expansion and dissemination does nothing to distinquish these fee-for-service operations from similar activities of ordinary commercial enterprises. Therefore, by assisting and aiding in the marketing of Scientology, you are engaged in activities which further a substantial non-exempt commercial purpose.

Your archival activities relate to the materials constituting the scriptures of Scientology. These materials consist of the written and spoken works of L. Ron Hubbard on the subject of Scientology. Prior to his death, Mr. Hubbard held the copyrights on these materials. The works you collected were being commercially exploited by Mr. Hubbard and some of the organizations licensed by him. You were supported by income paid to you by some of the organizations engaged in this exploitation, notably Religious Technology Center and Church of Scientology Flag Service Organization, Inc., a subordinate of Church of Scientology International. You were thus performing functions which benefited these organizations and furthered their objective of marketing Scientology products and services.

After Mr. Hubbard's death, Religious Technology Center and Church of Scientology International and its subordinates have continued to market Scientology products and services. Your collection of original Hubbard writing and tape recordings enhances their marketing efforts because the products they market are derived from these original writings and tape recordings. Therefore, you are operated for a substantial non-exempt commercial purpose.

In addition, the refusal to continue the review agreed to in the letters of March 17, 1988, to Church of Spiritual Technology, Church of Scientology International, and Religious Technology Center, concentrating on those areas of concern, and their refusal to fulfill the terms of the March 17, 1988, agreement prevents us from concluding that Scientology's operations have changed and that activities previously found to be disqualifying for purposes of section 501(c)(3) of the Code have been discontinued. Therefore, we conclude that you have not established that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code.

3. <u>You are operated for the benefit of private interests and your net earnings inure to the benefit of private individuals.</u>

In our initial adverse ruling, we concluded that your operations furthered the private interest of and resulted in inurement of net earnings to L. Ron Hubbard because he received royalties on the sales of products associated with the practice of the religion he founded. We also concluded that your activities served Mr. Hubbard's private interest through your participation in a plan to exploit Mr. Hubbards's trademarks, trade names, service marks, copyrights, and patents through licensing and assignment arrangements. We also concluded that your activities served the private interests of and resulted in inurement of net earning to organizations associated with Mr. Hubbard.

In your protest you called our attention to the fact of Mr. Hubbard's death and noted that his estate is in probate. Church of Spiritual Technology is the principal beneficiary of the estate and will receive the royalty income formerly received by Mr. Hubbard if it is determined to be exempt under section 501(c)(3). Based on these facts, you contend that private benefit, if there was any, ceased upon the death of Mr. Hubbard on January 24, 1986.

Mr. Hubbard's death does not erase the benefit and inurement to his private interest that occurred.

Further, both before and after Mr. Hubbard's death, you made the original writings and other materials formerly owned by Mr. Hubbard available to Church of Scientology International and Religious Technology Center in exchange for so-called "contributions" from Religious Technology Center and Church of Scientology Flag Service Org, Inc., a subordinate of Church of Scientology International. Religious Technology Center and Church of Scientology International engage in marketing Scientology to the public in a manner indistinguishable from that of an ordinary commercial enterprise. Therefore, your provision of the original Hubbard Materials to Religious Technology Center and Church of Scientology International serves the private interests of Religious Technology Center and Church of Scientology International.

In addition, the refusal to continue the review agreed to in the letters of March 17, 1988, to Church of Spiritual Technology, Church of Scientology International, and Religious Technology Center, concentrating on those areas of concern, and their refusal to fulfill the terms of the March 17, 1988, agreement prevents us from concluding athat Scientology's operations have changed and

that activities previously found to be disqualifying for purposes of section 501(c)(3) of the Code have been discontinued. Therefore, we conclude that you have not established that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code.

4. You have failed to establish that you are not operated for the benefit of private interests and that your net earnings do not inure to the benefit of private individuals.

Trusts and corporations can be used to siphon income from allegedly exempt organizations for the benefit of private individuals. This happened in the Church of California case. An allegedly religious trust and dummy Panamanian corporations were used to funnel money to L. Ron Hubbard.

Although the organizational structures employed by Scientology have changed since the California case, you have not clearly established that your relationship with the new entities furthers your exclusively exempt purposes. The past history of Scientology's operations suggests that the purpose of these organizations may be to disguise the fact that private interests are the ultimate beneficiaries of the reorganized operating structure.

An example of an organization which may serve private interests is International Publications Trust (IPT). Prior to the formation of IPT, L. Ron Hubbard granted licenses to New Era Publications (NEP) to produce Scientology books and E-meters. NEP sublicensed Bridge Publications, Inc. (BPI). The license and sublicense agreements provided for royalty payments from BPI to NEP and from NEP to L. Ron Hubbard. Then, IPT was formed to act as the holding company parent of BPI and NEP.

You informed us that IPT has two foreign trustees, Church of Scientology Religious Education College, a corporation, and Geoffrey Clunie, an individual. Our requests for additional information about IPT and its trustees and their relationship to the reorganized Scientology structure have not been answered. So, we see in place an entity that controls Scientology publications and E-meter production controlled by persons about whom no information has been provided. In the absence of any other explanation for this arrangement, we have no alternative but to conclude that the holding company's real purpose could be to benefit Mr. Clunie's private interest or the private interest of the College, just as intervening trusts and corporations were used to mask benefits to the private interest of L. Ron Hubbard.

Church of Spiritual Technology

It is also clear that NEP and BPI share in the commercial exploitation of these properties to benefit their own private interests. Mr. Hubbard's death did not effect the rights that NEP had already received from Mr. Hubbard prior to his death. Therefore, NEP and BPI are continuing to benefit from their part in the commercial exploitation of these properties even though Mr. Hubbard is no longer sharing in the benefits of the commercial exploitation. Even if Church of Spiritual Technology does eventually become the owner of the patents and copyrights formerly owned by Mr. Hubbard, the licenses granted to NEP will still be in effect. Thus the private benefit to NEP and BPI is ongoing even though Mr. Hubbard is dead and even though a number of new Scientology organizations have been created. Further, it has not been established that other new and old organizations about which our requests for detailed information remain unanswered are not sharing in private benefit. The potential beneficiaries include Author Services, Inc., SOR Management Servies, Ltd, International Scientology Film Trust, and International Scientology Religious Trust.

The same persons who were in charge of Scientology prior to Mr. Hubbard's death hold positions of control or influence in some of these new organizations. For example, persons who hold positions of influence in the reorganized Scientology structure also hold positions in Author Services, Inc., a for-profit corporation formed to benefit L. Ron Hubbard. Lyman Spurlock, David Miscavige, Greg Wilhere, Terri Gamboa, Marion Meisler, Maria Starkey, and Becky Hay, persons who hold influence in the reorganized Scientology structure, also hold positions in Author Services, Inc. Author Services, Inc., is now performing the same function of "collecting royalties" for the beneficiary of L. Ron Hubbard's estate. Thus, as happened in the Church of California case, the income of an allegedly exempt organization (Church of Spiritual Technology should it obtain recognition of exemption) will be passed through a for-profit corporation which is controlled by persons who also hold positions of influence in the Scientology structure.

A similar problem exists with regard to the "central reserves" of Church of Scientology International and its subordinate churches. A nonexempt foreign entity, SOR Management Services, is being paid under a contract to "manage" these reserves. Again, the income of allegedly exempt organizations is being passed through a nonexempt organization controlled by persons who hold positions in, or act as nominees for, organizations in the topmost levels of the reorganized Scientology structure.

Moreover, a newly revealed organization, International SOR Trust, about which our inquiries remain unanswered, has an ongoing relationship with some of the organizations engaged in the exploitation of the properties formerly owned by Mr. Hubbard. For example, at one time International SOR Trust purchased the stock of Bridge Publications, Inc., from Church of Scientology of California and later disposed of the stock to International Publications Trust.

Furthermore, individuals closely associated with Cancorp Investment Properties, a for-profit British Columbia corporation allegedly formed to serve the private interests of L. Ron Hubbard, about which we inquired, have been in positions of influence in the reorganized Scientology structure. You refuse to provide detailed information about Cancorp Investment Properties or Religious Research Foundation, another organization allegedly formed to serve the private interest of L. Ron Hubbard, about which we also inquired.

The proliferation of associated entities also includes a number of other new "international" organizations, about which we have inquired but you have not responded to our inquiries. Since the Scientology operating structure is the only funding source for these organizations, they and the persons who control them are also sharing in the income generated by the activities of Church of Spiritual Technology, Church of Scientology International, and Religious Technology Center.

In light of the past history of Scientology's operations, this continuing sharing in the net earnings of Scientology by nonexempt entities is sufficient by itself to raise serious concerns about private benefit and inurement. Nonetheless, you have chosen to ignore these concerns or have provided incomplete or partial information which is not adequate to establish that private benefit and inurement are not flowing to nonexempt entities, some of which employ and are directed by the same people who hold positions of influence in the new Scientology operating structure. Such self-dealing does not lose its identity as private benefit and inurement merely because it is conducted through intermediary individuals and/or organizations.

Accordingly, we find that you are not exempt because you have failed to establish that you do not operate for the benefit of private interests and that your net income does not inure to private individuals contrary to the prohibition contained in section 501(c)(3) of the Internal Revenue Code. In addition, the refusal to continue the review agreed to in the letters of March 17, 1988, to Church of Spiritual Technology, Church of Scientology International, and Religious Technology

Center, concentrating on those areas of concern, and their refusal to fulfill the terms of the March 17, 1988, agreement prevents us from concluding that Scientology's operations have changed and that activities previously found to be disqualifying for purposes of section 501(c)(3) of the Code have been discontinued. Therefore, we conclude that you have not established that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code.

Furthermore, the Service considers your failure to fulfill the terms of the March 17, 1988, agreement as constituting a failure to exhaust administrative remedies, as required by section 7428(b)(2) of the Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under code section 7428.

If you have questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

(Signed) E. D. Coleman
E.D. Coleman
Director, Exempt Organizations
Technical Division

ORIGINAL

UNITED STATES CLAIMS COURT

CHURCH OF SPIRITUAL TECHNOLOGY A California Nonprofit Religious Corporation,	)	
Plaintiff,	)	No. 581-88 T
vs.	)	
UNITED STATES OF AMERICA,	)	Complaint for Declaratory Judgment Pursuant to Internal Revenue Code Section 7428
Defendant.	)	

PLANTIFF'S EXHIBITS TO COMPLAINT

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October 6, 1988

Item	Date	Description of Item
927	05/23/88	CST Response to IRS Document Request (7 pages)
928	05/17/88	IRS Document Request 58 (1 page)
929	05/23/88	CST Response to IRS Document Request 58 (1 page)
930	05/23/88	Ex. 58 - Bank statement (3 pages)
931	05/20/88	IRS Document Request 59 (1 page)
932	06/13/88	CST Response to IRS Document Request 59 (1 page)
933	05/20/88	IRS Document Request 60 (1 page)
934	06/13/88	CST Response to IRS Document Request 60 (1 page)
935	05/20/88	IRS Document Request 61 (1 page)
936	06/13/88	CST Response to IRS Document Request 61 (1 page)
937	06/06/88	IRS Document Request 62 (1 page)
938	06/14/88	CST Response to IRS Document Request 62 (2 pages)
939	06/09/88	IRS Document Request 63 (2 pages)
940	06/14/88	CST Response to IRS Document Request 63 (1 page)
941	06/17/88	IRS Document Request 65 (1 page)
942	06/17/88	IRS Document Request 66 (1 page)
943	06/20/88	District Office memorandum to CST representative identifying documents for which they failed to make copies as required pursuant to agreement with applicants (3 pages)

[Item 943 is the final item relating to the District agents' review of CST's books and records.]

944	7/08/88	Rosenberg letter to CST representative enclosing CST's adverse ruling (1 page)
945	07/08/88	IRS final Adverse Ruling (11 pages)
946	07/12/88	Rosenberg letter denying Applicants' request to supplement administrative record with chronology of concerns that led them to suspend the review (1 page)

Bare-Faced Messiah

THE TRUE STORY OF L. RON HUBBARD

Russell Miller

MICHAEL JOSEPH
LONDON

MICHAEL JOSEPH

Penguin Books Ltd
27 Wrights Lane, London W8 5TZ (Publishing and Editorial)
Harmondsworth, Middlesex, England (Distribution and Warehouse)
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stressed, 'and it is probably the only part of Scientology that really works. Also, you've got to realize that my father did not worship Satan. He thought he *was* Satan.'

It was wild stuff, perhaps a little too wild. Just like his father, Nibs lacked subtlety. Had he been more restrained, the interview might have made an impact. Instead, it simply strained the reader's credulity to such an extent that it was hard to decide who was the most deranged – L. Ron Hubbard Senior or L. Ron Hubbard Junior. In November 1983, an optimistic letter from Ron was distributed to Scientologists around the world to tell them how well everything was going. He described himself as 'ecstatic' with the state of management and confident that their legal problems were behind them. 'Those who were harassing Scientology in the past', he wrote, 'are beginning to present a panorama of coattails.' He explained that he had been working on very advanced research for the last two years which was 'opening the sky to heights not previously envisioned' and concluded, 'So I wanted to say hello and to tell you the results of an overview of the game and, boy, does that future look good . . . Love, Ron.'

Ron did not bother to mention how Mary Sue was making out at the Federal Correctional Institution in Kentucky, neither did he comment on the time-bomb ticking away under the church in the slight form of his disenchanted archivist and biographer Gerry Armstrong, who had taken thousands of documents with him when he left Scientology – documents that *proved* the founder of Scientology was a charlatan and a liar.

For many months church attorneys had been trying to force Armstrong to return the material, having initially succeeded in having the documents placed under court seal. In May 1984, the issue went to trial at Los Angeles Superior Court before Judge Paul G. Breckenridge. A procession of witnesses trooped into the courtroom to tell their dismal stories about life in Scientology, at the end of which the judge refused to order the return of the documents and delivered a damning verdict on Scientology: 'The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

'At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating and inspiring his adherents. He has been referred to during the trial as a "genius", a "revered person", a man who was "viewed by his followers

in awe". Obviously, he is and has been a very complex person and that complexity is further reflected in his alter ego, the Church of Scientology . . . He has, of course, chosen to go into seclusion, but . . . seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.'

The judge then turned to Mary Sue, who had been released after serving a year of her prison sentence and had given evidence during the hearing: 'On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil . . .'

The Church of Scientology immediately appealed against the decision of the court, ensuring that the documents remained under seal and unavailable to hordes of waiting newspapermen, at least for the time being.

Three weeks later, a judge in the High Court in London joined in the attack by memorably branding Scientology as 'immoral, socially obnoxious, corrupt, sinister and dangerous' and describing the behaviour of Hubbard and his aides as 'grimly reminiscent of the ranting and bullying of Hitler and his henchmen'.

Mr Justice Latey had been hearing a case involving a custody dispute over the children of a practising Scientologist and his wife, who had broken away from the cult. Awarding custody to the mother, the judge gave Scientology short shrift: 'It is corrupt because it is based on lies and deceit and had as its real objective money and power for Mr Hubbard, his wife and those close to him at the top. It is sinister because it indulges in infamous practices both to its adherents who do not toe the line unquestioningly and to those outside who criticize or oppose it. It is dangerous because it is out to capture people, especially children and impressionably young people, and indoctrinate and brainwash them so that they become the unquestioning captives and tools of the cult, withdrawn from ordinary thought, living and relationship with others.' As to the Hubbards, the judge considered the evidence clear and conclusive: 'Mr Hubbard is a charlatan and worse, as are his wife Mary Sue Hubbard and the clique at the top, privy to the cult's activities.'

Following the teaching of L. Ron Hubbard, most Scientologists assumed that such attacks were orchestrated and engineered by their multitude of enemies. In 1985, when CBS's '60 minutes' investigated Scientology and presenter Mike Wallace quoted the 'schizophrenic and paranoid' decision of Judge Breckenridge, the Reverend Heber Jentzsch, president of the Church of Scientology, had a ready, if

incomprehensible, reply: 'I traced back where that came from, this whole schizophrenic paranoia concept that he has. It came from Interpol. At that time, the president of Interpol was a former SS officer, Paul Dickopf. And to find that Judge Breckenridge quoted a Nazi SS officer as the authority on Scientology, I find unconscionable . . .'

On 19 January 1986, Scientologists around the world received their last message from L. Ron Hubbard. In Flag Order number 3879, headed 'The Sea Org and The Future', he announced that he was promoting himself to the rank of Admiral. Alongside the proclamation, in a Scientology magazine, was a colour photograph of the grey-haired Commodore in his Sea Org peaked cap. He was grinning broadly, with a definite twinkle in his eyes. He had never looked more like Puck.

Creston, population 270, elevation 1110 feet, straddles a dusty road junction twenty miles north of the old mission town of San Luis Obispo in California. On the main streeet, which at most times of the day is deserted, there may be found the Loading Chute Steak Dining-Room, Creston Realty, a post office with a flagpole and two phone booths outside and a ramshackle wooden building with peeling red paint and a slipped sign proclaiming it to be the Long Branch general store. Rusting automobile hulks sprouting weeds, flea-bitten tethered horses and satellite dishes are a common feature in the gardens of the unassuming houses thereabouts.

On O'Donovan Road, which runs south off the main street, there is a small library, a school, the Creston Community Church Bible Classroom and the meeting hall of Creston Women's Club. Attached to the front of the meeting hall is a notice board offering for sale a horse, a pick-up and a '69 sedan, both these last 'needing work'. It is evident that the good people of Creston have yet to share the affluence to be seen displayed so ostentatiously elsewhere in California.

But further along O'Donovan Road, the rural landscape is clearly manicured by money. Rolling hills of green velvet are stitched with white picket fences and the houses stand well back from the road behind meadows sprinkled with wild daisies and studded with twisted oak trees. Four miles out of the town there is a graded track off to the right and a metal sign indicates it is a private road leading to the Emmanuel Conference Centre. This track winds up the hillside along the edge of the Whispering Winds Ranch, a 160-acre spread which, according to local gossip, was once owned by the actor Robert Mitchum. The gates to the ranch may be found after about 400 yards and the track then forks to a small cedarwood house on the right, continuing on the left up the hill to the Camp Emmanuel ecumenical retreat. It is a quiet place, a perfect place to hide.

L. RON HUBBARD

Messiah or Madman?

by Bent Corydon
and L. Ron Hubbard, Jr.

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23

The Boss's Withholds Are Revealed in a "Wog Court"

The Church side (representing Hubbard) was confident they would win the Armstrong trial.

In their view, the biographical documents clearly belonged to L. Ron Hubbard. Mary Sue Hubbard (newly out of prison, on parole) had clear claims as custodian. She claimed that her personal letters being viewed by the likes of Flynn was tantamount to "mental rape."

The documents were now in the custody of the Los Angeles Superior Court.

The Church pushed for a speedy trial, without doubt at the insistence of Hubbard, who was secretly living a couple of hours by car from the courthouse, near San Luis Obispo.

Any legal maneuvers, at any cost, were being used to ensure those documents were speedily returned "to their proper owner."

While the legal bureau fought hard for the return of "L. Ron Hubbard's" documents, Church P.R. would later make claims that key documents involved were really "forgeries" planted by Government covert agencies.

****

June of 1984 the trial began.

Gerry Armstrong was on the stand for a couple of weeks, and the trial lasted a total of almost ten weeks. There were star witnesses brought on by Flynn who had known Hubbard and his finances intimately; and the Church brought on Mary Sue and even an old sea

captain called Thomas Moulton, who had served under Hubbard during World War II in the Northeast Pacific.

I was fascinated by the proceedings and disclosures on the day when I first attended, and after that I took off almost every day from my other pursuits and drove the 50 miles to L.A. to attend.

The opening arguments were presented for the Church and Mary Sue Hubbard, by Mr. Litt:

CHURCH'S OPENING ARGUMENT (excerpts):

This case is, in essence, a very simple case. . . .

Mr. Armstrong in 1980, January or February of 1980, petitioned within the church that he be appointed as an archivist to gather up materials that had been found in a building on church property in a place out in the desert called Gilman Hot Springs; it turned out to be a great deal of old material of the Hubbards which had been gathered. . . .

Now the issue, therefore, is whether or not these private materials can be used by the defendant and introduced into evidence.

They want these documents spread on the public record for use elsewhere. That is the intended objective.

It is a desire to intrude into these private materials so that they can be used in the public arena in various ways, as part of what is in reality a very intense litigation battle and public battle that exists throughout the country in which Mr. Flynn is involved with the Church. . . .

The documents themselves are private and are entitled to the privacy protections of the United States Constitution. . . .

ARMSTRONG'S OPENING ARGUMENT (by Flynn):

It was Armstrong's decision what to shred. He decided that it [the box presented to him by Brenda Black] shouldn't be shredded on an initial cursory examination of the box, and entrusted it to Laurel Sullivan.

Subsequently, after a lot of other documents in the identical location were shredded, Armstrong began to look through the box of documents and he found documents which he thought had, quote unquote, historical significance, and he wrote a petition to Hubbard asking for permission to collect more materials to complete the biography project which had actually started in 1973; and the evidence will be that Laurel Sullivan and others actually began this biography project. But at various times it got derailed because the authors, one being a fellow named Peter Thompkins, wouldn't write what Hubbard wanted him to write.

So eventually we come up to 1980. Armstrong writes to Hubbard. Hubbard approves it.

Now, there is a key fact here and that is that Hubbard is in the process of fleeing because his wife has just been convicted of a felony, [for] obstruction of justice for stealing documents.

There is a pending grand jury in New York for the frame-up of a journalist named Paulette Cooper, and there is evidence which was then coming in before the grand jury relative to Hubbard's involvement in that frame-up.

So Hubbard flees. Subsequently he is determined to be concealing himself as a fugitive, and a federal court in Tampa so found.

What happened is, because Mary Sue was on her way to jail, because L. Ron Hubbard was fleeing, the control mechanisms within the organization over the documents deteriorated, and no one really knew (and to this day, no one knows, other than Gerald Armstrong) really what is in those documents (Because he is the one—other than Omar Garrison—who has analyzed them for years).

So, even Hubbard himself did not precisely know what was in the documents.

Now, Armstrong begins to go through them. He gets the approval from Hubbard. . . .

Over a period of a year and a half Armstrong collects all these documents, turning them over to Garrison and Garrison begins to analyze them to write the book, and starts writing the book.

Well, Garrison . . . realizes that the representations that were made by L. Ron Hubbard right from his birth, right up to present . . . are false. . . .

So Garrison realizes that he can't write what Hubbard wants him to write. In fact, if he follows any journalistic ethics, he's got to write just precisely the opposite. . . .

Garrison rightfully, pursuant to the contract, has the documents.

Armstrong has no documents at this point. He's turned them over to Garrison. For the next five to six months he works intermittently with Garrison on the biography project because they are now going to write their own, and he also works for a law firm part-time, subsequently full time.

Thereafter the Church begins to harass Mr. Armstrong. . . . They do a number of things. For one thing they make him an enemy . . . and subject him to the Fair Game Doctrine.

They steal photographs from him. They are his own private materials which he actually received from a third party. . . .

They steal other materials from him, which had nothing to do with the collection of documents when he was working for Hubbard. . . .

At the same time, in light of a lot of harassive acts, he's got very

paranoid. He's seen what the Church of Scientology, over the last decade, has done to other people.

He knows what they have done in the criminal cases and he is fearful . . . that they are going to kill him.

He then goes back to Garrison and tells Garrison what is happening, and Garrison then gives him the documents . . . to defend himself.

So he goes to a lawyer; namely me, and the reason he came to me is because he thought that there were very few lawyers in the United States who were willing to litigate against the organization because of what they do. . . .

Garrison, for the next year thereafter, continues to prepare the biography and, in fact, comes up with a publisher. Approximately one month after Mr. Garrison comes up with a publisher for the true biography of L. Ron Hubbard, he is approached by the Church of Scientology, attorneys for Mr. Hubbard, and they basically make a deal with Mr. Garrison. He will give them back every document he has. He will not disseminate the information. He will give them back the manuscript that he has done based upon the documents, and he will be paid some, I understand, $240,000, or something in that range . . . in the summer of 1983. . . .

There has been no conversion by Mr. Armstrong because he received the documents rightfully from Mr. Garrison . . ."

****

Regarding his examination of Mary Sue Hubbard, Michael Flynn told me he had mixed feelings about her. She had, after all, been made a scapegoat for Hubbard's crimes. On the other hand, she had done what she had done, and she did appear completely unrepentant.

In his examination of her, he did not appear to pull any punches.

During one exchange regarding Guardian's Order 121669, (covered in Chapter 11) where Mary Sue states:

". . . make full use of all files of the organization to affect your major target [prevent infiltration]. These include personnel files, Ethics files, Dead files, central files, training files, *processing files* (emphasis added), and requests for refunds."

The office headed by her, the G.O., had files that contained a great deal of information taken from "processing files"—also known as "preclear or "auditing" files:

Q (by Flynn). Let me show you a document dated 27 September,

1978, Info re_____[a woman's name omitted in respect of her right to privacy].

_____'s auditing files start with July, 1963. It goes on to state who she has been promiscuous with; and masturbating with coffee grounds, that type of thing. Do you see that Mrs. Hubbard?

A. I see that Mr. Flynn.

Later Flynn, referring to a document shown the witness, and reading:

Q. "Dear Cindy. Here is pertinent data from _____'s PC [pre-clear] files." Do you know who Cindy is?

A. She might refer to Cindy Raymond? She worked in the U.S. Guardian's Office.

Q. And there are references on the first page about the person's, for example, masturbation practices, that type of thing, Mrs. Hubbard, at the bottom.

Witness: Yes. Have you got something on masturbation? You keep asking me about it.

Q (by Flynn). Do you think your organization was interested in those types of things from a person's PC files, Mrs. Hubbard?

A. I don't know. I am looking at documents that seem to indicate that there was, yes, Mr. Flynn.

Prior to, and following, this testimony there was testimony from witnesses that pre-clear folder information was routinely "culled" for discreditable information and sent to "B-1", (the intelligence bureau).

However, one high executive, Lymon Spurlock, testified that this practice was discovered by him to have been done by Guardian's Office personnel, who had since been removed. He added that he had never done such a thing and was outraged to discover such a practice.

Later, however, Nancy Dincalsy testified that she personally culled pre-clears' folders daily and sent "overt" lists to B-1 of the Guardian's Office, per standard orders. She also said that she worked as an auditor alongside Lymon Spurlock for many months, and that she observed him also "culling" PC folders for the G.O. daily.

****

Captain Moulton was brought into the courtroom like the inevitable surprise witness in "Perry Mason." He was a handsome man in his

late sixties, over six feet tall, with grey hair and a walking cane. The very image of a retired ship's captain.

Church lawyer Petersen wore an air of triumph as he marched in with Captain Moulton. With a grin, he made an aside to Flynn. I couldn't hear the words exactly. It wasn't necessary. The intent was apparent: "We got'cha now!"

It quickly became clear that Captain Moulton had served under Hubbard off the coast of Oregon, after which Hubbard was removed by Admiral Fletcher for exceeding orders. . . .

> Q [by Flynn]. He told you that he was injured by a Japanese Machine gun?

Captain Moulton affirmed that Hubbard had told him the story while they were in training together in a naval training class in Miami.

> Q. Did he describe the circumstances under which he was injured by the Japanese machine gun?
>
> A. Yes, in some detail; not entirely.
>
> Q. What did he tell you?
>
> A. That he had been in Soerabaja at the time the Japanese came in or in the area of Soerabaja and that he had spent some time in the hills in back of Soerabaja after the Japanese had occupied it.
>
> Q. Now, Soerabaja was where, sir?
>
> A. That is a port on the north part of Java in the Dutch East Indies.
>
> Q. So you understood from Captain Hubbard that he had been in Java fighting the Japanese and was hit by machine gun fire?
>
> A. Not quite as you put it. He had been landed, so he told me, in Java from a destroyer named the *Edsel* and had made his way across the land to Soerabaja, and that is when the place was occupied. When the Japanese came in, he took off into the hills and lived up in the jungle for some time until he made an escape from there.
>
> Q. So you believed Captain Hubbard at the time?
>
> A. Certainly, I had no reason not to.
>
> Q. Did he tell you exactly where he was hit by the machine gun fire?
>
> A. In the back, in the area of the kidneys, I believe on the right side.
>
> Q. And did he tell you how long he remained hiding in the hills with these machine gun wounds before he was removed from the combat area?
>
> A. I know that he told me he had made his escape eventually to Australia. I don't know just when it was. He apparently—he and another chap—sailed a life raft, I believe, to near Australia where they were picked up by a British or Australian destroyer.

Q. And that would have been late 1941, early 1942?

A. I would imagine it would have to have been early '42 because it would take some time from December 7.

Flynn proceeded to show naval documents, one stating that Hubbard was ordered to Australia on November 24, 1941; and that he left on December 8, 1941, from the United States.

Captain Moulton noted that if Hubbard had been in intelligence, the document may have been spurious. "An intelligence officer, as far as I know, has all sorts of spurious letters stating where he is sent, when he got there."*

Another document was shown to him dated 14 February 1942, by the United States Naval Attaché, Melborne, Australia (the 14th of February would have been roughly one month to six weeks after he was "shot in the back by a Japanese machine gun").

Captain Moulton, like so many others, had been completely taken in by Hubbard.

Flynn read part of it aloud:

> The subject officer arrived in Brisbane via SS *President Polk*. He reported to me that he was ordered to Manila for duty and asked for permission to leave the SS *President Polk* until a vessel offering a more direct route to his destination was available. I authorized him to remain in Brisbane for future transportation to his destination. By assuming unauthorized authority and attempting to perform duties for which he has no qualifications, he became *the source of much trouble*. [Emphasis added]
>
> On February 11, 1942, I sent him dispatch orders to report to the commanding officer USS *Chaumont* for passage to the United States, and upon arrival report to the commandant 12th Naval District for future assignment. This officer is not satisfactory for independent duty assignment. He is garrulous and tries to give impressions of his importance. He also seems to think that he has unusual ability in most lines. These characteristics indicate that he will require close supervision for satisfactory performance of any intelligence duty.

*This is the essence of the Church's "sheepdipping" argument. They have an "expert" who claims that the "Armstrong" documents relating to Hubbard's military history were falsely placed there because Hubbard was in "counter-intelligence."

In fact, Hubbard spent less than two months in "intelligence" in Australia. Evidence indicates that he was engaged in the routing of ship movements.

Other documents which put Hubbard in a better light were also among the Armstrong documents, but the Church makes no claim that these were "sheepdipped." The "sheepdip" argument was apparently not given any weight by the Court.

****

Witness Kima Douglass (Hubbard's "medical officer," 1976–1980).

Q. Now you have heard the name Ernest Hartwell mentioned?

A. Yes.

Q. Were you in the presence of L. Ron Hubbard when he ordered Hartwell's PC files to be culled?

A. Yes. He ordered all crimes listed and signed by the Hartwells before they left. I believe the Hartwells were incarcerated for a short while.

Q. Now did you have the opportunity to personally observe L. Ron Hubbard between 1978 and 1980 with regard to irrational or abusive behavior?

A. Yes.

Q. And what did you observe?

A. That there were times he was irrational.

Q. And was he abusive?

A. I saw him hit one person. I consider that abusive.

Q. Did you personally see L. Ron Hubbard order people to the RPF for minor infractions?

A. Yes, I was one of them.

Q. And what was the infraction?

A. I had—LRH had a kidney infection. We had taken the urine test in to be examined. The urine test came back that he had streptococci bacteria and we started treating him with an antibiotic.

Six weeks later I did another test because he wasn't getting any better. We brought the test to him and it showed different bacterial infection at that point and he was very angry and put me in the RPF.

It was not an RFP as it later became when Gerry [Armstrong] was there. I was put into Coventry for five weeks and nobody was allowed to talk to me.

Q. Are you familiar with the culling of PC files at winter headquarters and summer headquarters at the Special Unit in 1977 and 1978?

A. Yes.

Q. And what did you see with regard to the culling of PC folders?

A. I have culled PC folders myself. I have seen other staff members culling folders.

Q. For what purpose?

A. To be sent to B-1.

Q. And B-1 is what?

A. Guardian Office Intel.

Q. And were you personally familiar with his health history?

A. Yes.

Q. And because of the nature of the technology of Scientology, his health history was held out to the public as being superior?

A. Yes.

Q. And you know in fact that his health history was not what it was represented to the public as; is that correct?

A. Correct.

Q. And on at least one occasion you had saved L. Ron Hubbard's life from a pulmonary embolism?

A. I got him into hospital. That saved his life. I didn't personally save his life, but he had refused to go into a hospital and I countermanded his order, which was not a normal thing. But I countermanded his order on two occasions. That was one of them. . . .

Q. Mrs. Douglas, was one of your duties inside the organization to courier cash around the world?

A. Yes.

Q. Have you crossed the United States in excess of a hundred times with millions of dollars in cash?

A. Well, not in excess of a hundred. I have not crossed the United States in excess of a hundred. It has been under that, but I have couriered hundreds of thousands of dollars out of the United States during the period when it was actually a criminal action, as it was actually only a certain amount of money to be allowed to be taken out of the United States, and I knowingly committed that action at the time.

Q. Do you know where the money was taken at that time?

A. To the ship. I took them to the flagship myself.

Q. Did you ever take any moneys to Luxembourg or Lichtenstein bank accounts:

A. Yes, I did.

Q. And what amounts?

A. I took some from the ship. I can't give you an exact amount, but it was in excess of a million.

Q. Did he suffer from pneumonia?

A. Once in a while.

The Court: *Did he have any bullet wounds in his back?*

Witness: *No sir.*

****

Cross-examination of Howard Shomer by Mr. Harris (attorney for the Church):

Let me ask you this, Mr. Shomer: You say when Mr. Hubbard was aboard the ship, he controlled everything under all circumstances all the time; is that right?

A. That is too inclusive. I mean, I didn't have to ask him to go to the bathroom.

Q. You said he managed it all the time.

A. We are talking about—let's get down to brass tacks. We are talking about the management of the Scientology network throughout the world, and everything that had any importance to do with the running of the ship otherwise, that he was the almighty that ran everything, yes. . . .

Homer's daughter, who had been brought into the Sea Org by him with the highest of dreams and hopes for them both, had been forced to "disconnect" from him after he left.

He had escaped from Gilman Hot Springs in early 1983. There he had been left under guard after an all night "gang bang sec check." During that night he was supposed to confess that he was an agent of the FBI, CIA, IRS, KGB or whatever. When he failed to do so, David Miscavage and Steve Marlowe spat in his face. They were both chewing chaw tobacco in anticipation of the event.

****

On the 20th of June, Judge Brekenridge issued his findings. He found that the Church and Mary Sue Hubbard were not to have their documents back "at least at this time," and that they could be made public (unless specifically ordered sealed) and used as admissible evidence in current, pending and future court cases.

Armstrong was entitled to judgment and costs.

He found that neither "The Church" nor Mary Sue Hubbard had "clean hands."

He found that Armstrong had permission to have the materials and acted properly in turning them over to Garrison and later retrieving them for his defense and then turning them over to Flynn as his attorney.

JUDGE BREKENRIDGE (excerpts):

As indicated by its factual findings, the court finds the testimony of Gerald and Joycelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Shomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. . . . In all critical and important matters their testimony was precise, accurate,

and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Sue Hubbard, of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous.

Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear" (P.C.) folders, or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In addition to violating and abusing its own members' civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies.

The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background and achievements.*

The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents.

He is referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe."

Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.

He has, of course, chosen to go into "seclusion," but he maintains contact and control through his top messengers.

*On "60 Minutes" Heber Jenzsch, the Church's senior public relations man, responded to the Judge's comments about Hubbard. He had, he said, investigated what was the basis of the judge's decision: "I traced back where that came from, this whole schizophrenic/paranoia concept that he has. It came from Interpol. At that time the president of Interpol was a former SS officer, Paul Dickoph. And to find that Judge Brekenridge quoted a Nazi SS officer as the authority on Scientology, I find unconscionable!"

Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena and service of summons.

LRH's wife, Mary Sue Hubbard, is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband.

On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian's Office for years and, among other things, authored the famous order "G.O. 121669" which directed the culling of supposedly confidential P.C. files/folders for purposes of internal security.

In her testimony she expressed the feeling that defendant [Armstrong] subjected her to mental rape.

In determining whether the defendant [Armstrong] reasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest.

The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys.

It is, of course, rather ironic that the person who authorized G.O. 121669 should complain about an invasion of privacy.

The practice of culling supposedly confidential "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous.

The Guardian's Office, which plaintiff headed, was no respecter of anyone's civil rights, particularly that of privacy. . . .

****

My belief is that Hubbard's rage, following Brekenridge's decision and statements about his being a "pathological liar" and a "paranoid schizophrenic," bordered on the hysterical. I'm convinced that he must have made demands that Flynn and Armstrong's "crimes" be uncovered immediately! *His "scriptures" state as an absolute fact that enemies of L. Ron Hubbard have crimes of magnitude!* While I have no evidence of this, the following events would not, I believe, have occurred without Hubbard's rage as prime stimulus. Acting on that rage, while fully believing Hubbard's raving accusations, Church agents, I believe, proceeded to become patsies for some uncommon thieves. . . .

A PIECE OF BLUE SKY

Scientology, Dianetics and L. Ron Hubbard Exposed

by Jon Atack

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tempts to prevent distribution of his *Bare-Faced Messiah* in England, Canada, Australia and the United States.

In 1983, the Legal office of the Church admitted that it did not know how many suits were outstanding in England alone. So many writs had been issued for libel it had lost track. In 1968, *thirty-eight* libel suits were dropped by the Church in England. Cases which continued were uniformly lost by the Church.

Boston attorney Michael Flynn won fourteen of the sixteen complaints brought against him by the Church, the remaining two being withdrawn. The Church has from time to time filed suits against the FBI, the IRS, the Justice Department, Interpol and even against Henry Kissinger (for $800 million).

Scientology has filed hundreds of cases over the years. Most have been withdrawn before trial, but in Britain suits against a former Police Commissioner and against Member of Parliament Geoffrey Johnson-Smith were both lost by the Church. In return, there have been hundreds of suits filed against Scientology. The Church was forced to pay substantial damages to former Health Minister, Kenneth Robinson, and withdraw their allegations that he had instigated "death camps," likened by the Church to Belsen and Auschwitz.[1]

Also in the legal arena are the reports of the many Commissions of Inquiry, and of several U.S. grand jury investigations. These run to tens of thousands of pages. Two books have been written about the attempt made by the Guardian's Office to take over the National Association of Mental Health in the U.K. in the late 1960s, which also ended in a ruling against Scientology in the English High Court.

Of all the court cases, two stand out. Their verdicts came down within a month of each other: one in Los Angeles, the other in London. The first, and perhaps the most revealing to date, was the case brought by the Scientologists against Gerald Armstrong.

Armstrong had joined the Sea Org in 1971. Over the years he held various positions close to Hubbard. During the trial he gave detailed testimony of these periods, and of his time in the Rehabilitation Project Force. His accounts highlighted the extreme duress of life in the Sea Org.

Armstrong saved over twenty boxes of Hubbard letters, diaries and photographs from the shredder at Gilman Hot Springs. On January 8, 1980, he wrote to Hubbard asking permission to collect material for a biography. A few years earlier Hubbard had lamented that no biography could be written because his personal documents had been stolen,

and the great Conspiracy against him would by now have altered all public records.

Far from being stolen by the Rússians in the early 1950s, as Hubbard had claimed, his personal archive had quite remarkably been preserved. When the Hubbards left Washington for Saint Hill, in spring 1959, the boxes had been put into storage, where they stayed until the late 1970s. Somehow they had been shipped to La Quinta, and thence to Gilman. Armstrong was excited by the discovery, as it would no longer be necessary to rely on the supposedly corrupted government records, with Hubbard's personal documents in hand.

Hubbard approved Armstrong's request only days before he went into deep hiding. Armstrong was titled "L. Ron Hubbard Personal Public Relations Office Researcher," and he collected over half-a-million pages of material by the end of 1981.

Omar Garrison, who had already written two books favorable to Scientology, was contracted to write the biography in October 1980, and the Archives were made available to him. Armstrong became Garrison's research assistant, copying tens of thousands of the most relevant documents for Garrison's use.

In his judgment in the Scientologists' case against Armstrong, Judge Breckenridge explained the gradual erosion of Armstrong's faith in Hubbard:

> During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.
>
> Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments.

Armstrong began a campaign to correct the numerous misrepresentations, but met with considerable resistance. In November 1981, he was ordered back to Gilman from Los Angeles. He was told by senior

Church official Norman Starkey that he was to be Security-checked. There was no desire to correct Hubbard's biography. To this day, Scientology Orgs sell books which contain the very biographies which Armstrong had proved false; Hubbard's *Mission into Time* is the worst example of many.

On November 25, 1981, Armstrong wrote to Commodore's Messenger Cirrus Slevin:

> If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

A few weeks later, Armstrong decided to leave the Church. Before leaving, he worked desperately hard to ensure that Omar Garrison had all of the documents necessary for an honest biography. After leaving, he maintained contact with the Biography Project, even helping to find documents in the Archives when the new Archivist was unable to do so, for two months following his departure. Judge Breckenridge's opinion continues:

> On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered enemies of the Organization . . .
>
> Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with eighteen different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on [sic] money under false pretenses, promulgating false information about the Church, its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."
>
> . . . from his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the

> documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

Armstrong, with Garrison's permission, made copies of about 10,000 pages of these documents, and deposited them with attorneys for safe keeping. Michael Flynn was one of these attorneys.

On August 2, 1982, the Church of Scientology of California filed suit against Gerald Armstrong for Conversion (a form of theft); breach of fiduciary duty (breach of trust); and breach of confidence. Mary Sue Hubbard joined the suit against Armstrong as an "intervenor," and added a charge of "Invasion of Privacy" to the suit. Judge Breckenridge's opinion continues:

> After the within suit was filed . . . Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony.

After hearing four weeks of testimony, and deliberating for two weeks, Judge Breckenridge ruled that Gerald Armstrong was entitled to judgment and costs. The preceding quotations come from a fifteen-page appendix to the opinion. The main body of the decision is one of the most forceful statements ever made against the Church of Scientology. Of the Founder and his Church, Judge Breckenridge wrote:

> In addition to violating and abusing its own members' civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism,

> greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers. He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.
>
> LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO [Guardian's Order] 121669" which directed culling of supposedly confidential P.C. [Preclear] files/folders for the purposes of internal security. In her testimony she expressed the feelings that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. . . . The court is satisfied that he [Armstrong] did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances. . . . It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidential "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy.

The documents involved in the case were extensive. They included copies of letters from Hubbard to his father, to his first two wives, and to the children of his first marriage. They also included Hubbard's teenage diaries, his Boy Scout records, poems, and the manuscript of an unpublished book called *Positive Mental Therapy*. Also included were Hubbard's letters to Mary Sue Hubbard over the years, where he said exactly what he was doing while researching the "Technology" of Scientology. For example, there are letters sent from North Africa in late 1966, to Mary Sue at Saint Hill, which give details of the drugs

Hubbard was taking to "research" the most secret of Scientology's levels, OT3.

During the course of the trial, the judge heard testimony from Armstrong; his wife Jocelyn; Laurel Sullivan, who had been Armstrong's senior on the Biography Project; the proposed author Omar Garrison; Hubbard's nurse Kima Douglas (who left Hubbard in January 1980); and former Author Services Incorporated Treasury Secretary Howard Schomer.

Omar Garrison, who had been commissioned to write the biography, had this to say of the documentation Armstrong provided:

> The inconsistencies were implicit in various documents which Mr. Armstrong provided me with respect to Mr. Hubbard's curriculum vitae, with respect to his Navy career, with respect to almost every aspect of his life. These undeniable and documented facts did not coincide with the official published biography that the church had promulgated.

Garrison intended to complete the biography, and continued with this work through 1982. In June 1983, he agreed to a settlement with the Church. The Church wanted to be absolutely sure that the manuscript wasn't made public. Garrison reluctantly agreed. He too had been followed by private detectives, "bumper to bumper." However, Garrison retained copies of documents from the Hubbard archives to ensure the church's good behavior.

Jocelyn Armstrong testified that she had worked on a project where Mission Holders were to sign backdated contracts, Board minutes and resignations.

Kima Douglas was Hubbard's personal Medical Officer from 1975 until her departure on January 16, 1980. From 1977, she was with Hubbard on a daily basis. She was also the head of no less than *fourteen* Scientology corporations, and had written undated resignations from each. Among these was the Religious Research Foundation, which was used to channel monies from the Flagship, and later the Flag Land Base, into non-Church accounts controlled by Hubbard.

Douglas testified that she was with Hubbard when he approved Armstrong's request to collect material for a biography. She had also been present when Hubbard had ordered that supposedly confidential counselling folders should be "culled" for admissions of crimes, and anti-social or immoral actions, for future use. Douglas admitted that she had seen Hubbard display "irrational and abusive" behavior, to

the extent of striking someone. She also revealed the extent of Hubbard's ill health throughout the years she served him.

The myth of L. Ron Hubbard was badly fractured. It seemed that his mesmeric hold over Scientologists, whether Church members or Independents, was slipping. The trance could only be maintained through a stubborn refusal to consider the material now available.

The Judgment in the Armstrong case was filed on June 22, 1984, just as Justice Latey was preparing to hear a child custody case in London.

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EXEMPT FROM FEES
per GC6103

8-29-91

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant. MARY SUE HUBBARD, Intervenor.	Case No. C 420153 ORDER ALLOWING THE UNITED STATES OF AMERICA TO EXAMINE AND COPY EXHIBITS 5-K, 5-L, 5-O, 5-P AND 6-O Date: July 26, 1991 Time: 8:30 A.M. Dept: 56

The above case came on for hearing before the Honorable Bruce R. Geernaert, Superior Court Judge, in Department No. 56, Superior Court, 111 North Hill Street, Los Angeles, California, at 8:30 AM on Friday, July 26, 1991.

William Drescher, Esq. appeared for the Church of Scientology of California. Edward M. Robbins, Jr., Assistant United States Attorney, appeared for the United States of America.

The Court has carefully considered the papers filed by the

parties, the oral arguments of counsel, and the entire record herein, good cause appearing therefor, the Court grants the government's motion; however, this order is stayed until September 3, 1991. After September 3, 1991, the Clerk of the Superior Court shall allow the United States of America to examine and copy Exhibits 5-K, 5-L, 5-O, 5-P and 6-O, or in the alternative, shall supply the government with copies of the identified exhibits.

The documents delivered hereunder shall not be delivered to any other government agency by the IRS unless criminal tax prosecution is sought of an order of the district court is obtained in the case of United States v. Zolin, Case No. CV 85-0440-HLH(Tx)(D.C. C.D. Cal.). The documents delivered hereunder are subject to the confidentiality requirements of 26 U.S.C. § 6103 which prohibits the government from disclosing tax return information except as authorized by Title 26 (U.S.C.).

IT IS SO ORDERED.

DATED: This _____ day of _____, 1991.

_____
BRUCE R. GEERNAERT
Superior Court Judge

ORDER ALLOWING THE UNITED STATES OF AMERICA TO EXAMINE AND COPY EXHIBITS 5-K, 5-L, 5-O, 5-P AND 6-O
Case No. C 420153

PRESENTED BY:

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United States Attorney
MASON C. LEWIS
Assistant United States Attorney
Chief, Tax Division

EDWARD M. ROBBINS, JR.
Assistant United States Attorney

Attorneys for the United States of America

ORDER ALLOWING THE UNITED STATES OF AMERICA TO EXAMINE AND COPY EXHIBITS 5-K, 5-L, 5-O, 5-P AND 6-O
Case No. C 420153

CERTIFICATE OF SERVICE BY MAIL

I, PILAR LEGASPI, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is United States Attorney, Tax Division, 300 North Los Angeles St., Los Angeles, CA 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action; that I am employed by the United States Attorney for the Central District of California, who is a member of the bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this certificate was made; that on AUG 2 7 1991, I deposited in the United States mails at 300 North Los Angeles St., Los Angeles, CA, in the above-entitled action, in an envelope bearing the requisite postage, a copy of ORDER ALLOWING THE UNITED STATES OF AMERICA TO EXAMINE AND COPY EXHIBITS 5-K, 5-L, 5-O, 5-P, and 6-O

addressed to

(see attached Mailing List)

at their last known address, at which place there is a delivery service by United States mail.

This certificate is executed on AUG 2 7 1991, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Pilar Legaspi

PILAR LEGASPI

CERTIFICATE OF SERVICE BY MAIL

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PROOF OF SERVICE BY MAIL

I am a resident of the County of Marin, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 711 Sir Francis Drake Blvd, San Anselmo, California 94960.

On October 18, 1991 I caused to be served the within **EXHIBITS SUPPORTING OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Anselmo, California, addressed to the persons and addresses specified on the service list attached.

Executed on October 18, 1991 at San Anselmo, California.

I declare that the foregoing is true and correct.

L. Phippeny

L. Phippeny

SERVICE LIST

(Exhibits Supporting Opposition to Motion to Seal Record on Appeal)

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12-7-91
Ga

OFFICE OF THE CLER
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 3 DATE: 12/05/91

Gerald Armstrong
P.o. Box 751
San Anselmo, CA. 94960

RE: Church of Scientology of California,Etal
VS.
Armstrong, Gerald
Corydon, Bent
2 Civil B038975
Los Angeles NO. C420153

THE COURT:

MOTION TO SEAL RECORD DENIED.